IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
vs.	)	Case No.: 3:15-CR-27
SYLVIA HOFSTETTER, COURTNEY NEWMAN, CYNTHIA CLEMONS, HOLLI WOMACK,	)	
Defendants.	)	

VOLUME XXXVIII (pp 1-238)

JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE THOMAS A. VARLAN

January 27, 2020
9:11 a.m. to 5:37 p.m.

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(Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.)

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(Call to Order of the Court)

THE COURT: Good morning and welcome back, everybody.

Before we bring the jury in, are you ready to go Ms. Pearson?

MS. PEARSON: I'm ready.

THE COURT: Okay. Before we do, let me respond quickly to the filing yesterday of Defendant Hofstetter's objection to jury instruction, other acts.

Couple things, one, the -- first of all, to the extent defendant is objecting to the admission of other acts, evidence, as stated in the third paragraph of the objection, the Court has previously ruled upon that, I think, in writing and orally, and the Court would overrule that portion of the objection.

To the extent in Paragraph 2, it states, "Ms. Hofstetter objects on the grounds of thefts do not relate to," and then it addresses the intent, motive, and/or knowledge language that the Court previously used in its limiting instructions to the jury when this evidence was introduced.

The Court does not disagree with that basis for the objection. The Court also does not disagree that the language that was used in the limiting instruction of that phase goes, quote, far beyond, closed quote, the language of the Sixth Circuit pattern instruction.

The Court would also note for the record when the

Court -- in the current draft of the jury instruction, the limiting -- the language mirrors that used when the Court gave, I think, on two -- at least two occasions a limiting instruction language when the evidence was introduced, and notes that there was no objections lodged at that time to the use of that language.

Nonetheless, since the Court's bent typically is to default to the pattern jury instructions for purposes of the jury charge itself, the Court will change the language on Paragraph 110, noting that it's already given that language during the limiting instructions without objection, and that language is maintained before the jury for purposes of the ending charge itself.

The Court will utilize the language from Sixth Circuit pattern criminal jury instruction number 7.13 and will state basically you've heard testimony the defendant committed -- the Defendant Hofstetter committed certain crimes or bad acts other than the ones charged in the indictment. If you find the defendant did those crimes or bad acts, you can consider the evidence only as it relates to the government's claim on the defendant's intent, motive, and/or knowledge. You must not consider it for any other purpose. Remember the defendant is on trial here only for the crimes charged in the superseding indictment, not for the other acts. Do not return a guilty verdict unless the government proves the crimes

charged in the indictment beyond a reasonable doubt, period.

Any questions?

MR. STONE: Your Honor, just let me put on the record, just in case this issue is litigated on appeal, that the government's position is -- just sort of go back to that. Our position from the beginning was that proof was intrinsic anyway, and so it would be a conservative fallback and note that the Court has chosen to go from the conservative fallback from our view, not necessarily the Court's view. And so just to make the record clear, we believe it was intrinsic and no instruction would be appropriate. So we just want to make that on the record.

THE COURT: Thank you.

If nothing else then, I believe we're ready to bring the jury in and proceed with closing arguments in this case.

(Jury in at 9:15 a.m.)

THE COURT: Thank you. Everyone may be seated, and good morning to our members of the jury.

THE JURY PANEL: Morning.

THE COURT: And welcome back. I hope you enjoyed the multiday break last week and your weekend.

Again, on behalf of everyone in the courtroom, the parties, counsel, and representatives of the parties, we appreciate the attention you paid during the evidentiary portion of this trial.

We are now ready for the closing arguments of the parties. As a reminder, I believe I told you way back when, closing arguments are not evidence. However, they are an opportunity for counsel for the parties to present to you or argue with you as to what they believe the evidence has shown and how you should address that evidence during your deliberations.

As a reminder, the government will go first with opening closing argument, and then the defendants in turn will have the opportunity for closing arguments, after which the government will have the opportunity for a final closing rebuttal argument.

I'm not -- I don't know that we'll get through with all the closing arguments today. It's been a long trial, and there's been some breaks in the trial, so at request of counsel for the various parties, I'm giving them ample time for their closing arguments. I'm also allowing those with multiple counsel to split up that argument if they'd like.

The government is going to go first, and I believe Ms. Pearson is going to present the opening closing argument, and then Mr. Stone will present the rebuttal closing argument.

But we'll just take it -- we'll start today and see how far we get and try to take our normal break.

So with that in mind, Ms. Pearson, you may proceed with opening closing argument on behalf of the government.

MS. PEARSON: Thank you, Your Honor. We will get through me today.

Good morning. On behalf of the United States, I just want to thank you for the apparent attention you gave to this case in taking in excess of three months out of your own lives. So on behalf of the United States, thank you very much.

What I want to talk to you about is about this case in the evidence. I just want to start with an overview. But for well over a decade, the United States is in the middle of an opioid epidemic. And like a virus, that epidemic spread from Florida and it came right up I-75 here to East Tennessee. And it brought with it addiction, crime, and death. It destroyed entire communities with just a handful of tiny white pills.

This epidemic arrived in Tennessee in the form of a pill mill, which is what we've been discussing this entire trial. Really no different in form and function than a drug house. The pill mill allowed addicts and drug dealers fast and easy access to extremely dangerous narcotics in exchange for cash.

And the pill mills operated by this defendant, Ms. Hofstetter and her coconspirators dealt thousands of customers with millions of high-dose opioid pills in their over four years of operation in Knoxville.

How many pills are we talking about? 11 million,

over 11 million in just four years. Two million of them prescribed by these three defendants, Ms. Womack, Ms. Clemons and Ms. Newman. That's about 215,000 per month in a little over four years.

But this case is not just about the pills. It's about the tens of millions of dollars in profits made by Ms. Hofstetter and her partners on the backs of drug addicts and drug dealers. And this case is about the defendant taking advantage of this epidemic and their decision to value a paycheck over the fundamental tenets of medicine, first and foremost to do no harm. And this is about the choice to value money over someone's well-being over that of the community.

This is a case about choosing the equivalent of about 130,000 a year in exchange for simply signing your name to a piece of paper and not caring at all about your responsibilities as medical caregiver.

What I want to do with you-all is, I want to take you through the charges that are before you. The Court will give you a verdict form, which will detail them. The things I have via this PowerPoint are simply just for our discussion today. And hopefully y'all can see it.

But with respect to Ms. Hofstetter, she's count -- she's charged in several counts that you're going to consider in your deliberations.

Count 1 is RICO conspiracy in violation of

18 U.S.C. 1962.

Count 2 is a drug conspiracy, which we'll discuss at length as we go forward.

Count 3 is a money laundering conspiracy associated with Count 2.

Count 4 is another drug conspiracy that we'll talk about in length as we go forward.

Count 5 is another money laundering conspiracy that goes hand in hand with Count 4.

Counts 6 and 7 are what we call substantive counts. They're substantive counts of money laundering in violation of 18 U.S.C. 1957.

And then Counts 11, 12, and 13 are what we call maintaining a drug premises. Those are associated with the various clinics that we've discussed throughout the course of this trial.

And Counts 14, 16, and 18 are what we call substantive drug distribution counts. Those are specific prescriptions associated with a specific overdose.

With respect to Ms. Clemons, she's charged in Counts 2, which is the drug conspiracy I referenced earlier, Counts 4, Counts 11 and 13 and 16 and 18. And we'll discuss all these as we move forward.

Ms. Newman is charged in Counts 2 and 4, which, again, are the drug conspiracies. Counts 11 and 13, again,

those are the maintaining the drug members. And Counts 14 -- and Count 14, which is distribution of a controlled substance.

And, finally, Ms. Womack is charged in Counts 2 and 4, which are the drug conspiracies before you, and Count 13, which is maintaining a drug involved premises.

Okay. I'm going to start -- I'm going to start with the drug conspiracies, but I want to tell you first, what I plan to do is go through some of the elements for each offense. I will tell you that the Court's instructions that he will give you hopefully this afternoon or tomorrow morning do control.

I'm not going to review each and every instruction of law that the United States anticipates the Court will get, but I'm going to go over a few that may assist you in understanding the argument that I intend to present. We'll review each element of the offense and some instructions that I just told you about.

And we're going to start with the drug conspiracy counts, as those counts encompass a vast majority of the evidence that the United States has put forth for your consideration.

We'll go over why each defendant before you is guilty. I'll explain each defendant's role and the things that they personally did, the criminal acts that make them guilty under the federal laws that we're going to talk about. I plan to review the evidence and explain how it kind of fits with the

law.

The Court will tell you that your collective recollection controls, and that's absolutely true. My presentation is argument and that of the defense as well.

So let's start with Counts 2 and 4. Counts 2 and 4 are the drug conspiracies that we talked about earlier. All four defendants are charged in both counts. The difference between the counts is Counts 2 deal with the Hollywood clinic, the Gallaher View 1 clinic, and Lenoir City. Counts 4 deals with the Gallaher View 2 clinic and the Lovell Road clinic, all of which the government asserts were pill mills in this case.

Let's talk about the elements. Drug conspiracy actually, despite the vast amount of evidence you heard, has two elements. One, and I'm paraphrasing the first element, but the defendant conspired with one another and others to distribute oxycodone, oxymorphone, and morphine. And the second element is, the defendants knowingly and voluntarily joined the conspiracy.

So when we're talking -- I'm going to bring all three elements in. When we're talking about a drug distribution conspiracy, the underlying substantive acts that we say that the defendants agreed to do is to distribute or traffic in narcotics.

So we got to talk about the elements of a drug distribution. So the first element, that the defendant

knowingly or intentionally distributed or caused to be distributed a controlled substance. Two, the defendant knew at the time of the distribution the substance was a controlled substance. And, three, the defendant's act was not for a legitimate medical purpose or in the usual course of professional practice or was beyond the bounds of medical practice.

So the controlled substances we're talking about were the oxycodone, the oxymorphone, and the morphine.

A distribution is the equivalent of writing a prescription. You'll be instructed on that in the vast instructions that the Court will give you.

So for the big picture here, when we're talking about a drug conspiracy, we're talking about people that have agreed to distribute narcotics. The agreement for Counts 2 and 4 is the essence of that crime.

Now, the one other thing I wanted to discuss with drug conspiracy is kind of some of the things that revolve around agreement. And you'll be given several instructions about how the government must go about proving that agreement.

One thing you'll be instructed on is the government is not required to prove a formal agreement, a written agreement, a contract. That's what -- we're not required to prove that. We're also not required to prove that everyone involved agreed to all of the details of the conspiracy.

However, the government must prove beyond a reasonable doubt that there was a mutual understanding, either spoken or unspoken.

We also may prove that by -- indirectly by facts and circumstances. That's the evidence. That's the totality of what's going on. That's one of the ways the government may prove that this conspiratorial agreement existed.

It also doesn't require under the law proof that the defendant knew everything about the conspiracy or everyone involved.

And, finally, the government is not required to prove that everyone joined the conspiracy on day one. Okay. And that's kind of an important point in this case, because we're going the talk about some actions in 2009, 2010, '11, and '12, as we get to these defendants who joined the conspiracy, some of them in 2013 into 2014.

The big picture here is, in other words -- and we'll start first with the three nurse practitioners before you. Once they knew they were working at these places that were trafficking narcotics which were pill mills for $65 an hour and they kept right on going, they've joined these drug conspiracies.

And, second, when they know, and then this -- in this case, when they write those thousands of prescriptions that we're going to be talking about, they're in. And those

prescriptions that they write, once they know they're in this conspiracy, they know what the purpose of the conspiracy is, are not for a legitimate medical purpose or in the usual course of professional practice.

Okay. Let's talk a little bit about Count 2 and the structure that was in place for this conspiratorial agreement.

First at the top of the food chain, for lack of a better term, you had the owners. Those are the Italian folks we've been discussing through the course of this trial. That's Luca Sartini, Luigi Palma, Benjamin Rodriguez, and Chris Tipton. Those are the folks that provided capital investment to get these pill mills moving in Tennessee. That agreement, with the exception of Mr. Tipton, started back in Florida with the Hollywood clinic.

Mr. Tipton coordinated the Tennessee side of the pill mill and was the owner on the ground. In return, all of these owners, Mr. Sartini, Palma, Rodriguez, Tipton received those weekly disbursement checks as payment for their investment.

The next kind of level in the conspiracy was Ms. Hofstetter. Her role was to manage the day-to-day business of each of the clinics. And she was always, as you recall from the evidence, pushing her staff to see more and more customers. The reason she was doing that is patient volume equals money, equals money for the partnership and for the Italians back in Florida.

Also part of the conspiracy were the providers. And in this case, we're talking about these three defendants. Their role in the conspiracy was to write prescriptions to as many customers as they could see on a daily basis or in each respective pill mill could fit into the schedule. In exchange they got above-average nurse practitioner salary.

And, finally, kind of the last part of this was you need customers. And you heard from some of the customers -- actually, I missed somebody. Sorry. You need office staff as well. You heard from some of those people, Ms. Lori Crabtree-Gaston, Stephanie Puckett, Shannon Hill, other facts that worked at the clinic. They were there to make it efficient, to move the paperwork, manage the patient files.

And then you have the customers. You've heard from about over a dozen customers, but as you recall from the evidence, these pill mills had thousands of customers, customers that flocked to these places to receive their prescriptions for opioids.

And I want to talk a little bit about how long this conspiracy went on. So for Count 2, you started back in Florida with the Italians, way back in 2009, where they opened their pill mill in Hollywood, Florida.

Then there was the December 2010 DEA raid of their clinic, but by that time, they had already made plans to come up to Tennessee, and they'd already actually even opened their

first Gallaher View 1 clinic.

And December of 2010, Gallaher View 1 opens. And then in May 2011, the conspiracy expanded to that new pill mill on Lenoir City. And then if you recall on March 2012, Gallaher View 1 closes because of all of those complaints and then whatever customers were remaining there, were transferred over to the Lenoir City location. And the Lenoir City pill mill stayed in operation until the FBI shut it down in March of 2015.

Now, the first type of evidence you heard with respect to Count 2 in that conspiracy came in the form of Mr. Tipton and Mr. Rodriguez. If you recall, Mr. Rodriguez called the Hollywood station -- Hollywood pill mill a Subway station. He also used the words "burn and churn."

Even before the DEA raid, because of the profitability of the Hollywood clinic, these folks were looking to expand. As you recall, he testified that Mr. Palma was already doing research and kind of had fixated on Tennessee as the next place the conspiracy needed to go.

When they landed here, they brought Ms. Hofstetter up with them to run their operation in Tennessee. And even though she stole from the trio in Florida, they brought her to Tennessee. Let that sink in for a minute. They brought somebody who they knew had stolen from them, up here to Tennessee to run things.

Mr. Tipton was already here in Tennessee. He was familiar how to run clinics. He knew, had connections to providers in the area, so he became an integral part of the conspiracy to open these clinics up here.

And Tipton, as he testified to you, he knew almost immediately that he was running a pill mill. But the reality for him was that the money was too great to stop.

Their collective testimony, both Tipton and Mr. Rodriguez, I would submit to you, was backed up by some of the other evidence that you heard in the case. They came into the enterprise from different places, one from Florida with the connection to the Italians, Mr. Tipton because he was here and was familiar with kind of the framework up here in Tennessee to run clinics.

But they both described the same structure, the same titles, and same purpose as the defining feature of the UCSC conspiracy, which were what these pill mills were.

Other witnesses, like Ms. Puckett and Ms. Hill, also told you how the conspiracy was structured, that Ms. Hofstetter was in charge, volume was important, and of course that these places were pill mills.

And the financials demonstrated their motivation for running these places. And if you recall, these folks, like Mr. Rodriguez and Mr. Tipton were getting weekly disbursement checks in the thousands. That's the kind of money we're

talking about, simply for opening these places up, and letting Ms. Hofstetter run them.

And when I call these places pill mills, I would submit to you that the totality of the evidence the government put forward is what makes these places pill mills.

Don't get me wrong, I'm not asking you to like these people, and I'm not asking you to make friends with them. But what I am asking you to do is evaluate their testimony in light of the totality of the evidence that you heard from the government.

So I've mentioned them, and I just want to remind you what these places looked like. So when we're talking about Count 2, we're talking about the Hollywood pill mill, we're talking about the Gallaher View 1 location, and then we're talking about the Lenoir City location in Lenoir City.

Now, moving on, before we get into kind of the meat of the evidence, let's talk about the separate and distinct structure of Count 4.

So Lovell Road, what I call Lovell Road, although it did include Gallaher View 2, had a different structure, if you remember. This was the offshoot by Ms. Hofstetter and Mr. Tipton, because they watched what these Italian folks were making in Lenoir City and Gallaher View 1, less investors, less owners, more money. So at the top of this conspiracy, you have Ms. Hofstetter and Mr. Tipton.

Then again, you have Ms. Hofstetter, she's actually playing dual roles in this conspiracy. Right? She's the owner, she's the investor, she's receiving those disbursements, but she's also managing the day-to-day operation of that clinic, first Gallaher View 2 and then Lovell Road.

Then you have the providers, again, Ms. Newman, Ms. Womack, Ms. Clemons. And if you recall from the evidence, they spent the majority of their time here. This is where they spent the bulk of their employment period with this conspiracy is at Lovell Road.

Again, you need office employees to run the clinic, take care of the paperwork, make sure the patients are getting in. And, again, it's the same folks we've heard about, Lori Crabtree-Gaston, Stephanie Puckett, Shannon Hill, and others.

And, of course, finally, you need customers, and they had them. And I would submit to you that as we go forward, this is the worst of the worst. They had the most customers and the highest volume.

So for Lovell, for Count 4, which is Lovell Road, you have the agreement by Ms. Hofstetter and Mr. Tipton to open that secret Gallaher View 2 clinic. That was the one opened in secret from the Italians.

As time went on, to build that clinic, as you recall specifically from Ms. Puckett, they used the discharged patients to kind of get that secret clinic going. And that was

from Ms. Puckett's testimony. And as time went on, they got -- it opened one day a week and then they had more days starting in about June of 2012 at that secret clinic.

Ultimately, they landed on October -- early October 2013. They relocated from Gallaher View 2, which is in that complex with that stand-alone business on Lovell Road. And, of course, Lovell Road remained open until March of 2015, churning out customers and thousands of prescriptions.

Okay. And if we recall, this is the location of Lovell Road between the Waffle House and the pornography store.

So I want to go back to the elements of distribution now, because I want to talk to you about a couple more instructions you're going to get in regard to that.

So if you recall, the first element is that knowingly or intentionally distributed or caused to be distributed a controlled substance.

Two, the defendant knew at the time of the distribution that the substance was a controlled substance.

And, three, which I suspect we'll spend a lot of time talking about, is the defendant's act was not for a legitimate medical purpose or in the usual course of professional practice or was beyond the bounds of medical practice.

There are a couple of instructions you'll be given, I'm going to go through just a few of them, that kind of relate to these elements, and specifically that third element.

And the first one I want to talk to you, I call deliberate ignorance. I'm going to read it verbatim. "No one can avoid responsibility for a crime by deliberately ignoring the obvious. If you are convinced that a defendant deliberately ignored a high probability that the controlled substances, as alleged in these counts, were distributed outside the usual course of professional practice and not for a legitimate medical purpose, then you may find that the defendant knew this was the case."

And the instruction continues. "But you must be convinced beyond a reasonable doubt that the defendant was aware of a high probability that the controlled substances were distributed outside the usual course of professional practice and not for a legitimate medical purpose and that the defendant deliberately closed her eyes to what was obvious. Carelessness or negligence or foolishness on her part are not the same as knowledge and are not enough to find her guilty of any offense charged under this law. This, of course, is all for you to decide."

And what's very important to remember about this instruction is that this instruction does not apply to the elements of conspiratorial agreement in Counts 2 and 4. What it does apply to is the Element 3 of drug distribution.

This instruction uses the word "ignorance," but in reality, it talks about whether each defendant took specific

actions. So we're talking about ignorance, but it's kind of the opposite of that. It's did these defendants take specific actions to ignore knowing the truth? In other words, when she made the decision, as I'm going to submit to you that each defendant in this case did on multiple occasions, to close her eyes on the harsh reality of the pill mills and the activities that were going on in those places, every day that she chose to close her eyes and she chose to go to that pill mill and write a prescription, that's what this instruction is talking about. That's deliberate ignorance.

So when you talk about ignorance, it's not -- perhaps it's inaction, but it's really a purposeful action to close your eyes, to ignore what's going around -- what's going on around you and just write that prescription.

And each provider, and I would submit that each defendant in this case did do this, became a drug dealer under the law when she chose to write the prescription and knew it was not for a legitimate medical purpose or in the usual course of professional practice, but yet masked those actions by deliberately ignoring the truth.

And what I want you to do is keep that instruction in mind when we talk about the evidence in the case, the red flags, what the owners' investors told you, the office staff told you, what the volume was like, the complaints by those businesses, specifically in Gallaher View 1, the actual

customers that you heard from, what they told you, the other providers, Ms. Fristoe, Ms. Chambers, and these defendants themselves through some of the other evidence and the inferences you can draw from that.

There's another instruction that kind of goes hand in hand, but it's actually what I call the opposite of this instruction.

And that's what I call good faith. If a nurse practitioner prescribes a drug in good faith in the course of medically treating a patient, then the nurse practitioner has prescribed the drug for a legitimate medical purpose in the usual course of accepted medical practice. That is, she has prescribed the drug lawfully.

Good faith in this context means good intentions and an honest exercise of professional judgment as to a patient's medical needs. It means that the defendant acted in accordance with what she reasonably believed to be a proper medical practice.

In considering whether a particular defendant acted with a legitimate medical purpose in the course of the usual professional practice, you should consider all the defendant's actions and circumstances surrounding them.

Before we talk about the definition of "usual course of professional practice," I want to focus on a couple key parts of that instruction. I'll bring it back. And one of the

things I want to focus on is, you should consider all the defendant's actions and circumstances surrounding them. And what I would submit to you, what that's telling you is, you cannot look at their actions or activities, as we heard them called, in a vacuum. You must consider the surrounding circumstances, unlike what Dr. Browder and Mr. McCoy told you.

And the keyword in this line is "reasonable," what she reasonably believed to be proper medical practice. We'll discuss these concepts as we review the interactions with customers at these pill mills. But in the end, what I'm going to argue to you and I'm going to submit to you is, this instruction has absolutely no place in your deliberations based on the totality of the evidence that's been put before you.

The last instruction I want to talk about with distribution and a legitimate medical purpose is the usual course of professional practice. The term "usual course of professional practice" means that the practitioner has acted in accordance with a standard of medical practice generally recognized and accepted in the United States.

A practitioner's own individual treatment methods do not by themselves establish what constitutes a usual course of professional practice. In making medical judgments concerning the appropriate treatment for an individual, however, practitioners have discretion to choose among a wide range of available options.

Whether a prescription is made in the usual course of professional practice is to be determined from an objective and not a subjective viewpoint.

So what this instruction tells you is what the government has submitted to you all along, is that the usual course of professional practice is an objective, not a subjective viewpoint, and that the practitioner's own individualized treatment method, which we did not see in this case, because everyone was getting the same thing, does not by themselves establish this standard.

Now, we kind of -- those are the instructions I want to discuss with you. You'll be given many more, and I would just tell you again that the actual instructions of the Court we do this afternoon or tomorrow will control your deliberations.

Now, let's talk about some of the evidence you heard. Let's start with the red flags.

So you heard from Mr. Stan Jones, but you also heard from a lot of other folks. You heard from the clinic staff, the other providers, and most importantly, the customers.

And we all called them kind of red flags of a pill mill. And they included cars full of people from far-away counties and states, people faking a limp on the way in and they're fine on the way out, drug sales and use in the parking lot, party -- patients that are pill sick or nodding out, high

volume, long wait times, paper signage, weird rules, for lack of a better term, require nonpatients to wait outside, complaints from neighbors to law enforcement, garbage, public urination in the parking lot, CSMD prescribing patterns, same or like prescription, discharging patients when they become a liability, no children ever present.

The other things you kind of heard was whether it was cash-based. There's mulch fires, no insurance. But those are the kinds of things Mr. Jones talked to you about and also some of the other witnesses talked to you about. And I think these are the types of things that you could should consider, first, whether or not they existed at these pill mills, which I submit to you that they did, but also does this put folks on notice who are working there?

So you've heard the term "window dressing" from witnesses. And they -- what I would submit to you, that even with the window dressing that we're going to go through, these red flags were glaringly obvious with each one of these pill mills run by both conspiracies, whether it was UCSC pill mills at Gallaher View 1 and Lenoir City or whether it was Lovell Road.

And when the providers became aware of these red flags, when they went to work every day, they walk in the door, they're seeing one or some of these things, and they keep going in, and they make the decision to ignore them, making not

inaction, but actually make the purposeful decision to ignore them, walk in the door, write the prescriptions, they're in the conspiracy.

So with respect to the Tennessee law changes, we just talked about window dressing, and you heard a lot of discussion and argument about Tennessee law changes.

So I want to talk about the applicable laws. So Dr. Blake kind of specifically kind of outlined some of these to you, and one of the ones we talked about was the creation of the CSMD or PMP.

If you recall his testimony, it was created back in 2002, came online in 2006. It was a good thing, and the Tennessee legislature meant it to be a good thing. But I would submit to you, the pill mills in both counts purported to check the CSMD. They might have done it for some patients, but you would see that many times that information was just simply ignored, yet they had their printouts. A lot of times you saw them in the file. You heard testimony that they were in folders in the clinics. But they had them.

We'll talk about medical directors, the Tennessee legislature endeavored to kind of set out some framework for medical director in their role in the clinic, supervising the nurse practitioners, reviewing files.

As you heard from these conspiracies, both Count 2 and 4, they had medical directors. They ran through medical

directors. Two of them are now since passed. So they had that, but I would submit to you that those medical directors followed a very specific pattern, and we'll talk about that in a minute.

Next, Tennessee state law, there was that prohibition for accepting cash, and these clinics, these pill mills certainly adapted. They accepted cash. When the law changed, they took the cash equivalent, and then you recall seeing those debit cards or those prepaid money cards that we discussed in the testimony. They certainly adapted, but I would submit that didn't stop the sponsors and the drug dealers from bringing those patients, those addicts to the pill mills. They just simply paid for them with their own debit card.

Then there was a Tennessee law in regard to doctor ownership. And when the Tennessee law changed, and you heard a lot of testimony about this, Hofstetter and coconspirators got that fancy law firm, Baker Donelson, I think the name of what it was, and they created that nominee agreement.

And the nominee is kind of the appropriate word, because the nominee agreement made the doctor the owner of the pill mill on the paper; however, each doctor/owner really had no power to do anything, hence the term "nominee." Right? Because they were nominated by the true owners of the pill mills. So they were nominated, but as you recall the testimony, they could have just as easily been pushed aside and

kicked out.

And this, I would submit to you, was most aptly demonstrated by the financial structures. Right? Doctor is getting a paycheck. The Italians, Ms. Hofstetter, Mr. Tipton, they're getting the proceeds. They're getting a return on their investment. They're the true owners. And that's why it's called a nominee agreement.

And then there was the Tennessee law change dealing with a dispensary on-site. The dispensary is that vehicle, much like a pharmacy, where you get your prescription on one side of the pill mill and then you just walk right over and get your pills in the other. If you recall the testimony, at least with Count 2, they contemplated doing that. They were going to do it. The law changed, and this was ultimately abandoned, and these pill mills didn't have a dispensary on site.

And then we talked a lot about the Intractable Pain Act. And that was present through the entirety of all these conspiracies. And I just want to talk about a few things in the act.

First, there's nothing in the act -- you'll be given instructions on this act. But there's nothing in the act that requires a doctor or nurse practitioner to write an opioid prescription. It's just not there. It does allow patients to decline other modalities, but there is no corresponding provision saying if this patient declines over modalities, you

have to write them a prescription for opioids.

Second, the act didn't change the standard of care, and you know that from Dr. Blake's testimony. He's been practicing, and the standard of care that he's utilized when he sees his own patients has been in place for over ten years, since he got out in 2009. He was aware of that act. He knows what the act says, but it does not change the standard of care that this Court will instruct you on.

And, third, there's a specific portion of that act that if as a doctor or nurse practitioner you choose to treat an addict or someone who has been addicted to drugs, there are guidelines, there are things the act says you should consider doing.

For example, you shall monitor the patient to make sure they're not diverting their drugs. You should consult with a psychologist or an expert in addiction as appropriate. I would submit to you that the totality of this patient population, you heard from a couple of them, but I would submit to you, based on all the evidence, the analytics of the CSMD, this total population was high risk and had potential for addiction, and there was an absolute disregard for any sort of routine monitoring.

Fourth and finally, it's called the Tennessee Pain Intractable Act, and I might have -- the Intractable Pain Act. It's the Tennessee law, it does not trump federal law in this

case.

And then, finally, we had the 2014 pain treatment guidelines. Those came kind of toward the end of the conspiracy. As Dr. Blake told you, they had to promulgate these for primary care providers in this space. But these guys weren't primary care providers. They were pain management specialized. That's what they held themselves out to be. They're in a different box insofar as the 2014 pain treatment guidelines.

In addition to superficially complying with all these legislature moves, they also had compliance documents via Debra Kimber. If you remember her testimony, she was a bit early on in the trial. The reality, though, is what Ms. Kimber testified to, that compliance was unimportant to Ms. Hofstetter. And if you recall, Ms. Kimber kind of recounted that last meeting with Ms. Hofstetter, that final in-person meeting where she told her she just wanted the damn manual on the shelf. The manual she's referring to is this kind of fancy compliance document that Ms. Kimber had compiled.

So in addition, now we've talked about some of the red flags, we've got the Tennessee state law and the superficial compliance these pill mills.

But then let's talk about just briefly about the shell companies. Another way to appear legitimate is to have official-sounding companies, and they had a bunch. And I've

just named a few, Medfix, UCSC Management, LLC, Shadd Management, ETHS, that's East Tennessee Healthcare Services, East Knoxville Healthcare Services, Comprehensive Health Systems, UCSC Management, Comprehensive Systems. And I don't think I've caught them all.

A shell company, when we call it a shell company, it means they don't really have a purpose. Say for, in this case, a vehicle to launder money. I haven't named them all. These companies provided a portion of the front. They sound official. They sound like they're involved in health care. But the reality is, they were just simply a front to make everything look on the up-and-up with every pill mill operated by both conspiracies.

So you've got the law changes, the shell companies. We still have the pill mill red flags despite all this.

Let's move on to medical directors. Tennessee law required you to have medical directors. They need a medical director. They start with Mark Blumenthal in November of 2010. Gallaher View 1 right off the jump street is showing signs of a pill mill.

The result of having him is that he starts to warn Ms. Hofstetter to no avail. As you recall from the testimony, he's in trouble with the Tennessee Department of Health. He ultimately left one year after joining the conspiracy, and he has since passed.

Let's talk about some of the warnings, though. This is from jump street a couple months into the conspiracy. This would be Exhibit 276 [sic]. And I've just gotten portions of it in this, not the entirety of the exhibit. Let's talk about it.

So January 20th, 2011, we're barely 60 days in. He raised a concern about the safety and security of our operation. He talked about an "obvious junkie or drug dealer, who became quite irate when I refused to prescribe him narcotic medication and then flipped, quote, unquote, Steffie the bird.

"Moreover, I have read at least on one account of a robbery or attempted robbery of a pharmacy every day for the past two weeks in the Knoxville News Sentinel."

It says, "Finally, I recently discussed our practice with my attorney. He explicitly warned me that TBI, Knoxville Police, Tennessee Board of Medical Examiners, and Tennessee Board of Pharmacy are all working together to eliminate pill mills and narcotic drug diversion."

And, finally, he said I am not -- "I am willing to work my tail off to help get this practice going and keep it going, but I am not willing to lay my life, reputation, license or freedom on the line to do so." So January 20th, 2011 e-mail.

Exhibit 2085, now we're on February 2nd, 2011, another e-mail to Ms. Hofstetter.

"Also I consider it vital we upgrade our prescribing [sic] methods. It is extremely burdensome to see increasing proportion of patients who are either doctor shoppers, pharmacy shoppers, or dual diagnosis (psychiatry plus pain management)."

So even then, February of 2011, doctor shopping, pharmacy shopping, those terms, we're talking 2011, eight years ago, nine years ago now, those terms are prevalent in this field. Dr. Blumenthal knows that. He's using them.

February 6th, 2011, Exhibit 2086, "Knox County has a tremendous drug problem. The legal authorities, pharmacy authorities, and medical authorities are all up a tree about what to do. Everyone involved with schedule two [sic] medications is under close scrutiny and inherently includes us. We cannot afford even the appearance of impropriety. I suggest we do the following: Tighten up our prescreening techniques. We are simply seeing too many patients who represent a hazard to our practice. Patients are already beating down our door to be seen, and I do not think we need to worry very much about our growth rate."

And he kept going. So we've got January, February 2, 2011, February 6, 2011. Now, let's talk about May of 2011. Again, another e-mail from Dr. Blumenthal to Ms. Hofstetter. "Pain clinic bill aims to curb prescription drug abuse, legislation called a no-brainer. We are nowhere near compliance with its intricacies. Let's get on the stick. No

BS."

The big picture here is, through these e-mails, he's talking about being concerned about his reputation, his license, and his life on the line. He knows what a pill mill is. He knows what diversion is. These aren't new concepts in 2011. This is January, February 2011. They're not new concepts, addiction, doctor shopping, abuse, risk screening, prescreening was talking about, all these things. He talks about Knox County having a tremendous drug problem.

This doctor knows it in 2011, and he's telling Ms. Hofstetter, this is what's going down at your place. He signed up for this, he stayed a year, but even a doctor willing to risk so much for this nonsense, her pill mill was over the top, and ultimately left, and he has since passed away.

What I would submit to you at this point in time, the Hollywood clinic has been raided in 2010. She's been notified by her doctor in 2011 via e-mail.

And recall the side scams, I want to talk about that for a quick minute, ran by Hofstetter and Hollywood, moving patients to the front, the things Mr. Rodriguez told you about, which sounded the same, but we're about to hear about from Ms. Puckett.

Warnings about Gallaher View 1 also came almost immediately from the landlord, from the security officer, Mike Daignault, and the other tenants in the building. And we have

with these e-mails, we have written proof she's on notice.

Next was Dr. Valley, if you recall him. Dr. Valley was, in his own words, desperate for a job, and in November 2011, he takes this position. And the first thing he does is he does a chart review and he authors a report kind of outlining issues he saw with that chart review.

Okay. Exhibit 498 on Page 262, he says, "In over twenty years of reviewing chart compliance, I have never been presented with such consistent and flagrant disregard of charting conventions and opioid management." In that same exhibit, he says, "If not corrected, poses an immediate and severe risk."

And then he keeps going, Exhibit 498, Page 262, "Often, it appears the patient directed the treatment plan. Often, the warning signs were ignored. There were cases where the patient had been discharged from other pain clinics, yet the records from these clinics were not requested and the situation was not addressed in the note."

Same exhibit, potential doctor shopping and the medications were continued. Patients were arrested for driving while under the influence, patient, and the medications were continued. Patients often refused to supply medical records supporting their condition.

And then the last thing he says, "There was one case where the patient was on opioids and the spouse girlfriend

called stating he had beaten her. The situation was not addressed in an appropriate manner. There was no documentation that the medical director was notified."

Finally, same exhibit, Exhibit 498, he says, these clinics fit all criteria for the definition of a pill mill. And at this point in time, he's talking about Gallaher View 1. We haven't even gotten to Lovell. That's what he's talking about, and that's language he's using.

Marc Valley, as you know, ended up leaving the practice. Exhibit 512, he sent an e-mail on May 30th, 2012 to Ms. Hofstetter and Mr. Tipton where he said, "Patients that I've ordered discharged for cause are not being discharged. I request that both of you spend a full day here to see what is going on."

Ultimately, Dr. Valley quit in July of 2012. If you recall his testimony, he described a pill mill with a meaningless chart and writing prescriptions for pain meds. He told you he regretted time at these places, but kind of the reality of Dr. Valley is being part of these pill mills, he contributed to the problem and he wasn't a good doctor.

And if you recall when Dr. Blake was asked if Dr. Valley runs in the same professional circle as him, I think he just had a one-word answer. It was no.

He'll have to live with what he did here, but he's the exact type of person these places were hired. He was let

go from multiple previous jobs, willing to take a position anywhere, and cared only about protecting his own skin, not about the patients. But even he, even this doctor had these things to say about her first clinic here.

So what does this tell you? Now we're in July of 2012, despite Valley's e-mails, Blumenthal's, Ms. Hofstetter is committed to running these places as pill mills. The money is just too good to stop.

Next we had Dr. Blakely. Again, we had an individual that moved through several jobs, fell asleep during surgery, lost his job, became the third medical director in August 2012. And if you recall his testimony about the first day at the clinic when he was outside, he overheard drug talk. He knew immediately that Lenoir City was a pill mill. He spoke to you about being under -- his medical authority being undermined after 10 or 11 days. He's gone.

Finally, we've got a combination that kind of works. They found Dr. Larson. He was a primary-care doctor by trade. If you recall, he had some health issues, dialysis twice a week, and he has since passed away after being indicted in this case.

In June 2012, he became the medical director of Gallaher View 2 secret location. But then after Blakely quit, he takes on Lenoir City, and ultimately he grabs Lovell Road as well. He knew nothing about pain management when he started.

And I would submit to you by accounts of the witnesses, he was asleep at the wheel.

The big picture of these folks tell you is that they selected doctors they believed would either not recognize the activity that's going on in the pill mills, because they weren't specialists, or just ignore it. And sometimes they strike out, Valley and Blakely. But in the end, they found the right combination.

Now, we alluded to this earlier, let's talk about some of the clinic staff. And I know you-all remember Ms. Puckett and Ms. Hill.

Ms. Puckett told you about a side scam, various side scams developed in the clinic. But what first what she told you is all the red flags that we just discussed early in the case were confirmed by both Ms. Puckett and Ms. Hill, the security guards, first G4, Mike Daignault, and then Ms. Hofstetter's boyfriend, Dion, the clientele, entire families going in the pill mills, the complaints by local businesses, volume of customers, actions by the clinic staff to keep the pill mills efficient, patient file upkeep, and the goal to keep the providers moving.

She also told you about the UDS side scam, where if you had insurance as a customer, your urinary drug screen went to one clinic, which generated kickback for Hofstetter's coconspirators. If you didn't have insurance, you went to the

cheaper lab.

Ms. Hill told you about removing UDS results from customers' files for a fee. And Ms. Puckett said, for a fee, she moved you to the fastest, better providers. And that sounds familiar like what was going on in Hollywood clinic with Ms. Hofstetter.

She could get away with it, because providers didn't routinely check the PMP. If you recall, you heard testimony that she upped some of the prescriptions. Because if they had, they would have caught Ms. Puckett doing that. And at the direction of Defendant Hofstetter, she also called discharged patients back to the clinic. Both women also received bonuses for patient volume because Hofstetter's goal was a hundred a day.

I would submit to you that these women didn't pull the wool over anyone's eyes. The evidence doesn't support this premises. They functioned -- these clinics functioned as pill mills before Puckett and Hill, during Puckett and Hill, and after Puckett and Hill. There are no outrage, save for an audit you've heard about by Hofstetter, which I would submit to you was meant to target Ms. Puckett, because she was mad that some of the customers were flocking to KPC.

But it didn't change anything about the operations. Puckett and Hill thrived because the pill mill environment encouraged this type of criminal activity. Everyone had a

scam.

You had Mr. Tipton with his lab kickbacks in the pill mills. Of course you've got Gerritt Orrick sponsoring patients, selling stolen goods in the parking lot. Then you've got all the other sponsors and drug dealers you heard about.

And if you recall Ms. Puckett's testimony about being thrown right back in the fire, that same temptation from her old days as a drug addict was there. She was well familiar with this patient population. It should come as no surprise that this is the kind of environment that you would find at a pill mill.

And I'm saying again, you don't have to make friends with these women. You don't have to like them. But I would submit that their testimony was absolutely supported and corroborated by the evidence in this case.

And you also heard from various clinic staff, such as Lori Crabtree and Crystal Lattimore. They were consistent on one primary fact, this Defendant Hofstetter was in charge, and she was focused on making money. And this was seen one way, as many customers as you could get in the door.

And let's move finally to the customers. Customers, I would submit to you, you've heard from a very small percentage, but they represent this patient population. They were addicts and drug dealers who sold opiates on the streets of East Tennessee. And they heard about these pill mills

through word of mouth. When they were discharged from one, they would simply find another. And they demonstrate the purpose of both conspiracies and also give you, most importantly, evidence that these three women knew what these places were.

And so I want to start with Exhibit 928. We talked about word of mouth. Who are they hearing this from? Friends and family in the same business. Two or more customers came from 866 addresses. That's 1700 people. Three or more customers coming from 148 addresses. And then we just keep getting smaller numbers. And you recall, we even had eight patients from KARM, which is Knox Area Rescue Ministries.

So you've got them hearing about it from word of mouth. You've got that type of volume coming from the same address.

So I've mentioned this once before, let's talk about the discharging these pill mills did. The discharges by these defendants and Ms. Hofstetter on occasion protected the pill mills. It was not care of a patient or even treating a patient.

Special Agent Vehec discussed what the United States referred to as a discharge shell game. All four of these women discharged patients. But the very fact that they discharged patients and the reasons for the discharge demonstrate that they knew who their customers were and what they were speaking

from these pill mills.

Exhibit 916, if you recall, this was kind of the breakdown of four years of discharges. Let's think about this for a minute. Over a thousand patients in just four years were discharged for urinary drug screens. A bad UDS range from prescriptions for a UDS positive for unprescribed drugs, negative for your prescription -- and we're talking about positive for unprescribed drugs, we're also talking about illicit drugs, heroin, cocaine, methamphetamines, amphetamines. And that's not an inclusive list. Dozens were discharged for track marks and dozens more for pill count issues, doctor shopping, and criminal activity. And that's just to name a few reasons.

These reasons speak to the patient populations when seeking pills for addiction and sale on the street, not for the treatment of pain.

And we call it a shell game for four reasons, first of which, customers went from pill mill to pill mill, and that didn't just include these family of clinics. That included places like Breakthrough, Chilhowee, Bearden.

The system allowed pill mills to purport to be compliant and vigilant, so I'm going to discharge that person. But the reality was, that person was just going to the next pill mill. It's almost like an ecosystem.

There's also the internal shell game that Agent Vehec

talked to you about. The FBI identified over 280 what we called re-admits. But you also heard testimony from Ms. Puckett that the files were sanitized. 280 is what the FBI identified. That is not the complete universe.

And, third, a discharge isn't treatment. As Dr. Blake told you, there are tons of other modalities that exist outside of opioids. If you have only one game, though, money for an opioid pill, of course, they discharged people, because it risked their business, as they had no other option for treatment. The ice, the stretching, the DME, that's part of the window dressing. They're not paying $300 a visit for heat, ice, and stretching.

And, fourth, addicts draw the attention of law enforcement. All the pill mills are doing it. Anyone who wants to the -- who they believe brings too much attention has to be discharged. And, of course, these three defendants discharged patients.

But what I want you to take away from Exhibit 918 is, look at the discharge in relation to the patient visits. And we can take Ms. Clemons, for example. She discharged 197 folks, but I would submit to you that when we're talking about a discharge rate of 2.46 percent in relation to the 8,000 visits she had, that ain't anything to write home about.

You've heard -- and you've also heard instances where these defendants discharged a patient and they just show right

back up at the sister clinic. These discharges are evidence that they know who these patients are, they're aware of it, and this makes them coconspirators in both counts.

We also talked to you about the DAST. And this is just one example. And we did not present the DAST, because it matters whether or not it's an accurate drug-abuse screening tool. What we did do is present it to you because it just shows the utter lack of care that these customers received at these pill mills. It was the only way that these pill mills screened for abuse or addiction, literally the only way, this one piece of paper.

Remember the consensus even back then, cross appeal to pain management, that risk stratification assessment is crucial to prescribing these high-dose, dangerous opioids or any opioid, for that matter. And pill mills here made this decision to use this as lip service. It's a one-sheet page of paper.

And even when customers reported alarming behavior, no one followed up or did anything, and a lot of times, they just scored it wrong anyway.

So let's talk about Mr. Mason. He's answering yes to being arrested to illegal drugs. No action.

We had Sean Richardson, if you recall Ms. Alred's testimony, this was somebody that was in her drug group. He said yes to using drugs and -- other than those required for

medical reasons, yes, he felt bad about his drug use, yes to friends or relatives know or suspect you abuse drugs, and yes to withdrawal symptoms. No actions.

You didn't hear from this customer, Jamie Samson, but he answered yes to friends or relatives know or suspect you abuse drugs, yes to lost friends because of your use of drugs, yes to -- had a medical problem as a result of your drug use. No action.

Chris Pique, you didn't hear from him. But this customer said yes to friends or relatives know or suspect you abuse drugs, yes to drug abuse ever create a problem between you and your spouse, yes to gotten into fights under the influence of drugs, and yes to withdrawal symptoms. No action.

Samantha Oody, if you recall Ms. Puckett's testimony, I believe her entire family was going to one of these places. She said yes to neglected your family or missed work because of drug use, yes to withdrawal symptoms, and yes to medical problems as a result of your drug use. No action.

Jamie Brummitt, you didn't hear from this person. But this person said yes to family members have sought help for you regarding your drug abuse, yes to medical problems, and yes, ever gone to anyone for help of your drug problem.

These are just a few of that exhibit. No inquiry, no inquiry into whether or not the medical problems these folks are talking about could be an overdose or something more

serious, no inquiry into what kind of help they sought for drug abuse, nothing. When these three defendants ignored these in the file, they chose to ignore the one piece of paper that would tell them anything about this person and write the prescription. This is evidence that they know these prescriptions are not for a legitimate medical purpose.

And the very folks that we presented to you, let's start with the first premise that everyone has been arguing for for three months, addicts and drug dealers lie. They lie to get the drugs that they seek to abuse or sell on the streets. They lie about their pain and the conditions causing their pain.

But I'm going to argue to you and submit to you that the evidence demonstrates that any nurse practitioner would be smacked in the face for the lies told by these customers.

If a defendant wanted to see the truth, it would have smacked her in the face the minute the customer walked in the room. The lies are clear to a nurse practitioner who is checking the PMP, reviewing a drug screen, conducting a comprehensive patient history, exam, forming a diagnosis, treatment plan, or even Looking at the DAST where some of these folks are talking about problems they're having.

In other words, if you choose to do your job as a nurse practitioner, you should know these folks are lying. These lies are transparent. Addiction and misuse aren't just

for opioids. They've been common principles throughout the course of medicine, alcohol, other drugs. This is not a new concept, and it certainly wasn't a new concept in 2014.

These customers were not masters in disguise, they're not chameleons, and they're not on the Oscar nomination list. There's a reason Blake and even Browder and McCoy don't prescribe opioids on the first visit. It's actually one effective way of screening some of these folks out, and it's advertising you're not a pill mill.

And when Ms. Womack, Ms. Newman, and Ms. Clemons made the decision to overlook these lies, the appearance and even the information on the charts, those prescriptions are not for a legitimate medical purpose.

And on some occasions, like UC Sterns, Mr. Sterns, in his undercover capacity, when Ms. Clemons covered up that lie by saying, "I'll just put you're on vacation," that is one instance where you can look at where she's taking deliberate action to mask that truth.

Each defendant chose to write pills to customers missing urinary drug screens. They chose to write prescriptions to customers with bad urinary drug screens in the file. They chose to ignore the medical director when he said "high" on the file or indicated some sort of referral.

And she -- each defendant made the decision to forego pill counts, a free version of monitoring to see if somebody is

actually using the drugs as prescribed. And they made the decision to not request medical records or previous pain clinic records for numerous customers who reported it. They chose not to take any action other than writing that prescription for opioids pills.

And these choices are most aptly demonstrated by the second page of each patient visit where those pain levels stayed the same, as clearly filled out by someone other than the provider. These charts are a joke.

And the window dressing used by these customers, the lying, I'm in pain, was as thick as the window dressing as those fancy nominee agreements and those shell companies drafted by the owners, such as Mr. Rodriguez, Mr. Tipton, and Ms. Hofstetter. It's as flimsy as that.

And even then, dozens of DASTs, UDS screens missing or aberrant, sitting in the file -- because not everyone is paying Puckett and Hill, it's a small percentage of the thousands of patients going to these places -- were purposely disregarded by each of these three defendants.

This is all evidence that demonstrates prescriptions written by these three defendants were not for legitimate medical purpose.

And I'm just going to briefly run through some of the things you heard from the patients. This was a random defense chart, randomly selected by some sort of numeric system. He

went to pill mills in Florida and Tennessee. He was addicted, word of mouth, he told you. He was discharged from Lenoir City. Ultimately landed at Lovell. Told you all these places were the same, pill mills. Through the course of all those visits, all three defendants wrote him prescriptions at Lovell.

We had Ms. Elliott. She started out being sponsored by Jason Butler, she testified. And at one point, she made 30,000 a month. She told you Lovell was obviously a pill mill, and she stayed at Lovell even after Ms. Puckett and Ms. Hill left. And then she attempted to follow Ms. Womack to her next clinic and contacted her about coming over with another customer about -- to keep getting opioids. She told you she was a drug dealer. Ms. Clemons and Ms. Womack wrote her prescriptions at Lovell.

And then there was Lee Jenkins. He sponsored many people, including his own family members, he testified. And if you recall his testimony, he said, what I could see, I'm sure she could see, talking about the providers. There are addicts there, and he even talked about them not being able to hold their heads up. Ms. Puckett assisted him at Lovell. He testified Hofstetter was always raising Cain about patient behavior. He had 15 missing UDS results and still got his pills.

You don't need a fancy medical license to figure out what this means. All three providers disregarded the medical

director's directive.

The "high" notes are another example of the choices to ignore the medical director. These are specific choices you make. Three hundred is now the limit, as evidenced by the last note on Mr. Jenkins, "MED too high." All three defendants wrote Mr. Jenkins prescriptions.

Then we had Scott Willis. He was discharged for methamphetamine. He was called right back to Gallaher View. He was discharged from there. And then he finally landed at Lovell. His discharge papers and his probation paperwork were in the file.

He talked about his track marks and the excuses he gave for that, one of which was a chainsaw. Testified he was a junkie. He was getting more meds than a cancer patient. And he called these places dope houses. Both Ms. Clemons and Ms. Womack wrote prescriptions to Mr. Willis.

Ms. Osborne, she traveled to pill mills in Georgia, Florida. She said they were all the same, including Gallaher View 2 and Lovell. Elliott told her about it. She referenced it was crowded. And if you recall, she had a small amount of Suboxone. She still got her pills from Ms. Clemons. All three women on trial wrote prescriptions to Ms. Osborne.

Then there was Scott Stockton. He was a customer at Gallaher View and Lovell. He said they were both like the other pill mills he had been with. He had a brief romantic

relationship with Ms. Newman. He said a visit cost about a thousand out of pocket. He heard about it through word of mouth. And he told you he felt lucky to be alive, because he was given enough pills to kill a horse. All three defendants wrote prescriptions to Mr. Stockton.

There was Gerritt Orrick. He had been to pill mills in Florida. He had seven cars, jewelry. He brought the staff cupcakes, sponsored customers. He said the Lovell waiting room looked like the mission. He showed up multiple times a month on days he didn't have an appointment, and he sold stolen goods in the parking lot. He said Newman hit on him. Providers, they liked me, drug dealers like me. All three defendants wrote to this customer.

Then we have Randy Garrett. He was a patient at Breakthrough until it was shut down. That paperwork was in the Gallaher View 1 patient file. He injected opioids for years until he was arrested.

He was discharged from Lenoir City and then called to come back to Gallaher View 2, ended up at Lovell. And if you recall Mr. Garrett, he had multiple excuses for track marks on his arm, one of which was picking blackberries. He told you he went to Lovell pill sick and saw other pill sick customers that were high. There were needles in the parking lot.

And he said it was easier to get pills from these clinics than off the streets. And he stayed after Ms. Puckett

and Ms. Hill left. He said nothing changed. All three defendants wrote this man a prescription.

Mr. Ledford, he was going with his wife. Butler was sponsoring him. And he testified the exams felt like a checklist, and that they would punish you with a reduction in meds. And he kind of analogized that to, well, a doctor doesn't cut your insulin if you don't get a test done, and that was the analogy he used. All three defendants wrote to this patient.

And then there was Ms. Watson. She started at Gallaher View 2. She was 21 or 20. She had been going to pill mills in Florida. During a visit with Ms. Womack, she referred to Opanas as half moons. She was told not to use street lingo. Womack wrote her a prescription in the waiting room without meeting her. She lost over 15 pounds in four months. I think she lost over 20. Nobody asked her about that. All three defendants wrote to Ms. Watson.

There was Danielle Ledford. She had a fake MRI. She described the waiting room as rowdy. She was addicted to pills. She talked about the weird rules. She was often pill sick. All three defendants wrote to Ms. Ledford.

Then there was Heather Alred. Her PMP showed Suboxone treatment for over a year, and Ms. Newman accepted her as a patient. She testified that other pain clinics refused to treat her. Lovell had a good representation among her druggie

friends and typical little pill mill population red flags that she described to you.

Her meds were increased by Ms. Womack upon her request. And she testified she was essentially treated worse after claims of kidnapping and rape. She was discharged for drugs she claims she never took, yet her accused rapist remained. All three defendants wrote to Ms. Alred.

Then there was UC Matt Sterns. He went for over a year as an undercover patient. And it's kind of luck of the draw, he didn't have any kind of video visits with these other two defendants, but he got Ms. Clemons four times. You saw the videos. I don't need to relive them.

You know what passed for an exam. You know she wrote steady gait, despite in the video he's already seated. And then you remember the October 16th, 2000 visit where he says he borrowed meds, and she said, "I'll just write you were on vacation." Ms. Clemons wrote to UC Stern.

And then there's Mr. Patterson. He started going at Gallaher View for somewhat legitimate reasons, but quickly turned despite the -- his -- his inability, to use the word, it turned into an addiction. He had medical training. It was obvious to him that no real medical treatment was going on. And on occasion, he waited five to six hours. He described everyone knew each other. It wasn't like a normal doctor's office.

And he didn't say the same thing as Stockton, that he was getting off meds to kill a draft or a horse or whatever Mr. Stockton used, but he said, where he was working with cancer patients, that he wasn't even tempted to take their meds because of what he was getting at these clinics.

The defendants ignored "high" notes for him on multiple occasions, and his pain level 7, 9, 7 stayed that way for the entire time. All three defendants wrote prescriptions to Mr. Patterson.

Then we had Melissa Mulkey, another random defense chart. She went to pill mills in Georgia. She said these Tennessee places were no different. Just show up, get your pills. She was an IV drug user. She was an addict. She went to prison, is now clean. Ms. Clemons and Ms. Womack wrote prescriptions to Ms. Mulkey.

There's Ernest Johnson, another random defense patient chart. He got pills for pain, became addicted, bought them off the street, started going to pill mills. Went to several pill mills that all closed down before going to these pill mills. He was initially taking them by mouth, and then he started snorting and shooting them. All three defendants wrote to Mr. Johnson.

There's Ms. Cantrell. None of these defendants saw this woman, but she told you she was addicted to Roxicodone and oxymorphone. She went to injecting them. Borrowed money from

her friends and her parents, because that's the reason they don't have money anymore. Easy to get pills from these pill mills, and she's now clean.

Finally, there was Michael Canada, another random defense chart. He went to the pill mills in Florida and then started going here, all the same. He said a drug dealer would call these places a trap house, a place people could come to get drugs. He was addicted. He would go high to the pill mills, and he's now clean. Ms. Clemons saw Mr. Canada.

Finally, in addition to the customers, the red flags, the window dressing, the DAST, we presented two providers that worked at the clinics, specifically Kim Chambers and Gayle Fristoe.

Gayle was a temp from Texas, and she came here to be near her son. Ms. Hofstetter told her, if you recall from her testimony, it was a post surgical and wound clinic. When she showed up, she described her first day on the job, the only soup kitchen open in Tennessee and everybody seems to be there. She described it as very crowd. She used the words life and death for people who were starving. She kind of -- she used those analogies to talk about the customer base at the pill mill. And she also told you she couldn't even find a band-aid in the place.

On the last day of her contract, she described people yelling at her not to leave before you write my prescription.

She talked about customers thought she was just going for lunch, when in reality, she wasn't ever coming back. And at noon, she left the clinic, and they chased her. Described it like a riot. Went back to her hotel room and called the DEA.

She refused to be deliberately ignorant. She's not -- as she told you, she's not stupid. She may be a little slow, and those were own words, but the place didn't follow the standard of care. She said it was a pill mill, and she was ashamed of her prescriptions. Only 24 shifts in and she still figured out somebody was manipulating the drug screens.

Then we had Ms. Chambers. Same thing, now we're six months later. Fristoe is in the summer of 2012. Fast-forward, now we're in February of 2013. She called it a pill mill. She was employed in February 2013. She worked five shifts at Lenoir City. She cut prescriptions, customers complained. She saw a patient fake a limp and then walk normally, and she decreased the patients meds, only to have Dr. Larson give him the higher dose he was asking for.

And after this, she goes and sees Ms. Hofstetter and Dr. Larson. And Ms. Hofstetter, she recalled this conversation to you, basically told her she was too strict for their clientele, and needed to think about it if he wanted to keep her job. She e-mailed her resignation. And what it boiled down to, that conversation was a get with the program. This woman decided not to, and she quit. She refused to be

deliberately ignorant when she was writing these prescriptions.

It didn't take these women long, and I want you to think about the raw emotion you saw, especially from Ms. Fristoe when they talked about working at these places years after the fact. Especially with Ms. Fristoe, you could tell she still felt that emotion from being even a small part in perpetuating these places. Guilt that you've never heard about from these three defendants.

We discussed decisions and choices. Ms. Chambers, five shifts, Ms. Fristoe, 24 shifts, Ms. Newman, five and a half months, Ms. Womack, 11 months, three of which she had her DEA license, Cynthia Clemons, 16 months.

So when we talk about the law, and you recall elements one of Counts 2 and 4 of the agreement to enter the conspiracy, recall that they don't have to enter on day one, day two, day three, day four, day five, but when you choose to deal drugs via these types of prescriptions, when you write the volume that we're about to talk about associated with these women, I would submit to you that all three defendants made the choice to join both conspiracies at issue with this case.

Ms. Chambers and Ms. Fristoe, they chose not to accept the paycheck because they knew what they were doing was wrong.

And finally, you heard from Dr. Blake and Dr. Carter. But actually, in reality, and I know these were the medical

experts, and we spent a lot of time qualifying that, been telling you about their impressive backgrounds. But they should have told you and confirmed to you what you know based on all the other evidence in this case, that with respect to Ms. Hofstetter, she never intended to treat pain at any of her pill mills. This is 300 to 350 a visit, per customer, per month. These defendants, Ms. Newman, Ms. Clemons, and Ms. Womack, did not treat their customers. They wrote prescriptions, period.

The practice of medicine is more of just than a patient coming in saying they have pain and being handed a prescription. There's no different or separate tenets of being a nurse practitioner in pain management. They've got to do a history. They've got to do a physical exam. They've got to do a diagnosis, and they've got to formulate a treatment plan and follow-up.

If you choose, in addition to these, just four basic things of being a nurse practitioner, if you choose to specialize in a field like pain management, you just must stay up to date in your field. And that makes just common sense. These fundamental tenet apply to every specialty in the medical field. They are taught it from the very beginning from nursing school.

If the above is not true, if they're not required to do these four things every time somebody walks in the door,

then why do we need a nurse practitioner? A customer would not need doctors for pain management or nurse practitioners. You would simply bypass the clinic, go to the pharmacy, tell them you have pain, and receive opioids.

Dr. Blake and Dr. Carter, they're not the gold standard. They're telling you how it should work in any medical practice. They testified how the standard of care does work and the fundamental basic steps in diagnosing and treating a patient.

And if you recall Dr. Blake specifically, as he in the field of pain management, he talked about how he approaches these fundamental tenets and then how he evaluates why not to use opioids, and he told you that because the risk of side effects go dramatically up at a MED over 110. He said the risks are serious.

You have to worry about the psychological effects, other medical conditions, and there are other modalities that you can consider. And he also said you don't start at the highest dose like these places did.

And think about how that dovetails with Dr. Mileusnic, the chief medical examiner of Knoxville. But when she got here in 2002, an explosion of overdoses. And then when the state -- when the county endeavored to figure out what drug was leading drug-related deaths, it was oxycodone in 2010, '11, '12, '13, '14, and '15 in this area.

And that goes with what Dr. Blake is telling you. Overdose, adverse reactions with other drugs, depression. Opioids can mask other serious conditions you may have. And this was known over a decade ago from today.

He's been practicing the same since 2009. And the standard of care that he applied in his objective review of the customer files is the same he used back then. And most important, when he's evaluating those files, when he's evaluating his own customers, that risk assessment for addiction abuse, that risk stratification is always in the forefront.

And here's -- and here's what Dr. Blake told you that truly makes this case horrific. It's not that Newman, Clemons, or Womack did not meet the gold standard. It's not even the fact they didn't come close to the standard of care. They were certified being nurse practitioners in Tennessee. They've got some regulations that go along with that, the Board of Nursing guidelines, which outlines the basic tenets we described above.

They chose, and they actually made the decision to cease being nurses at all. A conscious choice they made not once, but every customer visit and every prescription they wrote at the pill mills.

And they made the decision to cease doing even the fundamental things, the appropriate history, the physical exam, the diagnosis, the treatment. They were not doing an adequate

history, they were not doing an adequate physical exam, diagnosis, or treatment.

And in addition to that, they coupled this choice with the decision to ignore risk assessment and risk monitoring for the use of these high-dose deadly opioid pills. This evidence demonstrates again and again their agreement to become part of the conspiracy. And when they wrote those prescriptions, they were not for legitimate medical purpose in the usual course of professional practice, and they knew it.

And in these pill mills, I would submit to you that pain is irrelevant. It was irrelevant whether a customer had real pain, a serious condition, or was in true need of pain medication. No matter what the condition that customers said, no matter what level of pain, they received the same thing, high-dose, deadly opioids, almost always Roxicodone 30s, a drug the defense's own expert called poison.

A similar result could be reached by simply just walking out to a busy city street and handing out prescriptions. Perhaps somebody comes by and has pain. Perhaps they come by and they're addicted, or perhaps they're a drug dealer. It's the exact same thing. These three defendants chose to act -- not to act as medical professionals, and that's when they became drug dealers.

And what most aptly demonstrates that is Exhibits 954, 959, and 966. In these pill mills, they're in

separate rooms seeing separate customers, but they have the same common recipe, and that was a long-acting and short-acting opioid, the blue being the long -- the short-acting.

These charts just speak for themselves. They have the same proportions. Take a look at the "other" category. You can't even see it because it's so small, because that's not what they're there to do.

The evidence in this case, the prescription recipe shown by the PMP data in these charts show that they generally prescribed the same thing to each patient they saw. The totals tell you it's a pill mill.

Ms. Clemons had 741,923 oxycodone pills, 209,401 oxymorphone pills, and over 120,000 morphine pills during her employment. Ms. Newman had 462,000 oxycodone pills, over 138 oxymorphone pills, and over 54,000 morphine pills. And Ms. Womack, in the three months she had a DEA license, had 169,000 oxycodone pills, over 61,000 oxymorphone pills, and over 16,000 morphine pills.

That's a grand total of approximately 655,000 for Ms. Newman, over one million for Ms. Clemons, and over 247,000 for Ms. Womack, and we're just talking opioids. These numbers speak volume.

And if you recall, Dr. Browder's halfhearted attempt to call these places primary-care practices, they're not treating ear infections or colds or high blood pressure. And

they didn't even bother to prescribe other modalities of pain. Oh, yeah, they checked some boxes, said heat, ice, and stretching, but they handed out a common recipe of pills in exchange for cash. It's the end of the story.

And those same exhibits, let's just talk about the volumes of prescriptions, every time they're putting that pen to paper or using scripture.

Ms. Womack, over 1,600 prescriptions for oxycodone, 991 for oxymorphone, and 252 for morphine, all in three months.

Ms. Newman, over 4,000 for oxycodone, 2,000 for oxymorphone, and 852 for morphine, and then you have Ms. Clemons and her over year of employment, 7,800 prescriptions for oxycodone, 3,400 for oxymorphone and 1,900 for morphine.

At this volume, they are part of both Counts 2 and 4 conspiracies. And as to Element 3 of drug distribution, these aren't for a legitimate medical purpose and certainly not in the usual course of professional practice. They -- on their worst day, they have made the decision to write those prescriptions as a drug deal for approximately $65 an hour. And on their best day, they're writing the script, being deliberately ignorant. There's no good faith or honest effort, as demonstrated by any of these prescriptions.

And let's check an analogy to the clinic. Here are prescription summary charts for the clinic. The ratios look

the same. Sure, you have a little more benzodiazepines, but that's from 2011, 2012. Over 11 million pills, and there's even, as you heard from Mr. West, about a dozen missing providers from this amount. These numbers are astronomical, period.

So the patient files they filled in and their inactions with the patients demonstrate their knowledge in deliberate disregard for the environment they were in as employees of pill mills.

And like I just said, this is the same exact evidence, the CSMD analysis and all the things we've talked about, that allow you to absolutely reject the premise that any of these three defendants were operating in good faith, were naive, or uneducated as pain management. All three had some sort of nursing experience, yet despite this experience, these providers did not do any sort of adequate physical exam, history, diagnosis, or treatment.

We spent days hearing from Dr. Blake about his review of these customer patient files, and you even got to see those four appointments with Ms. Clemons. These aren't outliers. These defendants did not care. And even worse, they chose not to use fundamentals of being a nurse. And then like we said, the astronomical amount of opioids.

So let's talk about some of the things Dr. Browder and Mr. McCoy said. There was kind of this argument put out

there that you could lie, the fall at the feet of Dr. Larson. But the medical director, you heard, is not responsible for their actions. They routinely disregarded comments by him, such as "high" and referrals. It was because whatever he said did not matter. There was no repercussion for ignoring any patient file comment by him, and you saw multiple examples of that. Medical director, like we've -- like I've said earlier, is part of the window dressing. To make a decision to disregard the direction of your medical director, to say I'm not going to do what he's saying to do in this file is an absolute rejection of good faith and an honest effort. But it's also an indicator that you're in agreement to sell opioids to drug dealers and addicts.

So you know they didn't treat these customers for the following reasons: Medical records from previous clinics were not reviewed. Think of Richard Gregory, Brandy Kreis, Jessica Watson, Heather Alred, UDS results were missing, no action, UDS results were aberrant, no action, a gross lack of pill counts, a free way to check to see if customers are taking a prescriptions as prescribed, a report of customers with medical conditions, depression, et cetera, no action, medical tests requested, no action, PMP sporadically reviewed, DAST answers, and, of course, no exam history or treatment that was adequate.

Recall the resumes that Agent Vehec went over with you from Ms. Newman, Ms. Womack, and Ms. Clemons. Ms. Clemons'

resume professed to be an experienced nurse with 18 months of individualized pain management. In reality, she used questions such as heat, ice, and questions about people to window dress the files. You know this because everyone got opioids.

Ms. Newman had previous pain clinic experience on her resume, and her prescription patterns matter to Ms. Clemons. And Ms. Womack had ICU nurse experiences. Inevitably, narcotics are used in an ICU, yet in this case, all of her patients got the same prescription as Ms. Clemons and Ms. Newman.

These providers requested blood tests, new MRIs, and miscellaneous items that appeared via medical decisions. But in reality, they were just window dressing. And there's no evidence in the file from the witness testimony that any of those things were followed up on. Everyone is getting the same thing. This is not individualized care.

And they're not being tricked by some Randy Garrett coming in saying he was picking blackberries. The PMP would have told them some of these folks were opioid naive. Recall Ms. Alred's Suboxone, the multiple discharges you saw in the files. They are making the decision to close their eyes to the very facts that should have smacked them the face.

And, finally, we get to the defense experts, Dr. Browder and Mr. McCoy. I want to go back to this standard for usual course of professional practice. Whether a

prescription is made in the usual course of professional practice is to be determined from an objective and not a subjective viewpoint.

Both experts changed their opinion on the stand, and both defense experts used the subjective standard. Browder told you he was trying to get in the head of each defendant and find a good reason why they did it. McCoy argued with me that he could not see how it could be -- how it could not be a subjective standard.

The jury instructions are going to tell you this is an objective standard. And you saw visible struggle by each defense witness, Dr. Browder and Mr. McCoy, to do just that.

But in the end, two things were clear, they thought the care was bad, and they had to individualize each visit, each activity, as they called it, in order to justify the prescription. You could see Dr. Browder sigh, pause for a minute, wring his hands just to get himself to a place where he could say it was a legitimate medical prescription. Think of him changing the opinion after the break but then not being able to tell you what subject his opinion was about.

And you can't look at each activity in a vacuum, as Mr. McCoy and Dr. Browder would like you to do. These -- this is what they had to do to come here to testify, but it's nowhere near the jury instructions the Court will give you. It's not a single activity. It's the totality of the picture

painted, which makes ordering tests or issuing prescriptions legitimate in the usual course of professional practice. You have to take into account all the information available to a medical provider, not just a particular action on its own.

Dr. Browder and Mr. McCoy's subjective opinions played out on the stand and it just stands in stark contrast to the evidence in this case. And so on behalf of the United States, I'm going to ask you to regard those, and I think you should regard those opinions, which is entirely in your power as jurors.

The revenue also tells you in addition to the PMP analysis and in addition to all the things we've talked about, the revenue tells you that these places were pill mills.

In the summer of 2011, Gallaher View 1 has a high of $227,000. This is Exhibit 893. Lenoir City revenue, a high of $163,000 in the winter of 2013, because now it's competing with Gallaher View 2, unbeknownst to it. And let's talk about the big moneymaker, Gallaher View 2 and Lovell Road. In May of 2014, a monthly take of 411,000 for a clinic sitting between Waffle House and a pornography store.

Ms. Hofstetter told you it was all about the money for her and volume. If you recall Agent Nocera's testimony with her goal of a hundred patients, and he demonstrated some of the e-mails that showed you that. One body in the door equals 300 to 350 a month, and that's how this was thought of.

And she told you in text messages that it was all about the money. And you can also see with Exhibit 652B, when she responds to Enriquez, it's all about the money.

34 million total cash played and churned at just Seminole and Cherokee. A loss of 1.7 million just on slots, a loss of 937,000 just on slots. And her total clinic profits of 4 million.

This is the big picture. For Ms. Hofstetter, you can see from the chart the sheer numbers we're talking about. This is the big picture right here. You see Dr. Valley's dip in revenue here, if you recall his testimony, and you see that 411,000 in May of 2014. This clinic was the worst of the worst, and if you divide that 411,000 by 300, that will tell you roughly how many customers were going about that time. Dollars equal lives at this pill mill.

So just think about the owners here. Just for investing, Gallaher View 1 income, 7.1 million, Lenoir City, 5.39, Gallaher View 2 and Lovell Road, 8.5 million for clinics on the side of the road. This is why they did it.

Before we move on from the drug conspiracies, I want to cover one last thing, and that's the overdoses in this case. And I want to remind you, we've got the two drug conspiracies, we've got drug conspiracy elements. And I know this is a bit repetitive.

But now what we're going to talk about is the

overdose elements. So you've got your two drug conspiracies. And in each drug conspiracy, there are two overdoses. So with respect to Count 2, there is Ms. Sandra Boling and Ms. Carolyn Hayes, and with respect to Count 4, there's Ms. Anna Vann-Keathley and Mr. Henry Reus.

And so there's a couple ways you can find in an overdose resulted in a prescription. Let me just go back. I told you about Counts 2 and Counts 4. Counts 14, 16, and 18 are what we call the substantive counts that we associate with those overdoses. Ms. Hayes doesn't have a substantive count. That dealt primarily with a prescription written by Dr. Larson. So that's only in Count 2. Whereas the other three overdoses I wanted to discuss, Ms. Boling, Ms. Vann-Keathley, and Mr. Reus, have substantive counts.

So there are two ways that the government can prove an overdose death. One in order to establish a death resulted from a defendant's conduct, the government must prove the harm would not have occurred in the absence of the defendant's conduct.

It can be done two ways. The first is called independent sufficient causation. Under this theory, the government must prove beyond a reasonable doubt that the drug or drugs standing alone were enough to cause the death. That's way one. I'm going to call that independent causation.

The other way is but-for causation. Under this

theory, the government must prove beyond a reasonable doubt that the death would not have occurred but for defendant's conduct. The government need not prove that the death was foreseeable to the defendant, but the government must prove beyond a reasonable doubt the death would not have occurred had a mixture and substance containing a detectable amount of controlled substance distributed by the defendant not been ingested by the individual.

Evidence of the drug merely contributed to the victim's death is insufficient. However, when the use of controlled substance combines with other factors to produce death and death would not have occurred without the incremental effect of the controlled substance, but-for causation exists.

For example, if poison is administered to a man debilitated by multiple diseases, the poison is a but-for cause of his death, even if those diseases played a part in his demise, so long as without the incremental effect of the poison, he would have lived.

So that's a mouthful. Let's talk about how either one or two independent causation or but-for causation applied to the overdoses in this case.

If you recall Ms. Hayes, you heard specifically from Debbie Shockley and Dr. Robbins. She died on September 11th, 2012. You had an autopsy and a toxicology report, and the drugs that we're kind of focused on are oxycodone and

oxymorphone. I would submit to you this is going to be one of those but-for causations because Ms. Hayes already had a heart condition.

If you recall Ms. Shockley, she was living with Ms. Shockley. She kind of went through that last day of Ms. Hayes' life with you where she was at court, she ended up in the hospital, then she came home, and they continued to abuse drugs by snorting them that evening. They all went their separate ways for bed. In the morning, she woke up, Ms. Hayes was dead.

Also Dr. Robbins he was the ER doctor that saw Ms. Hayes in the ER. If you recall, he testified to Narcan and the various steps he took her to bring her back from an overdose. And his note said patient stoned on prescription meds.

If you recall Agent Nocera's testimony, he simply took the Exhibit 920A. He took the chart and kind of summarized who were the individuals that saw Ms. Hayes before her demise. Two things I want to point out with Agent Nocera's summary chart, the first of which is that they had medical records in the chart indicating she had overdosed before in 2012. And those records were received well before that last prescription by Dr. Larson, yet nothing in the chart indicated that anyone looked at those records.

And second, that the last prescription written to

Ms. Hayes was by Dr. Larson himself. And as you recall, the patient chart was Exhibit 441, there's Dr. Larson's prescription for oxymorphone and oxycodone as well as Xanax to Ms. Hayes.

And then you recall Dr. Lochmuller's opinion. He was the medical examiner that did the autopsy. He opined her cause of death was oxycodone, oxymorphone, both of which were prescribed bring the clinic, and the manner of death, accident. This supported by Ms. Shockley's testimony, who described Mrs. Hayes' last day consisting of the pill mill visit, the court appearance we just discussed, and the ultimate overdose she discovered in the morning. I would submit to you, she didn't go to another clinic. She got her drugs from Lenoir City as a patient file indicates. And this went uncontested by the defense.

I would also ask you to recall the heart issue that Dr. Lochmuller told you about and kind of how that would interplay with an overdose. Because she's got a heart condition, her heart is already not getting a lot of oxygen because of the blood flow. Couple that with a respiratory -- a CNS suppressant like an opioid, and this is absolutely something that could happen to someone like Ms. Hayes.

I want to talk to you next about Ms. Boling. If y'all remember Randy Haynes, he flew in here from Oregon. He described her as going to pill mills for a year, including

Lenoir City. Started with back pain. She got addicted. She died on February 12.

They had a fight that day, but it was over how she used her drugs. The agreement was, she could party the day she got her pills, and then they had a fight that evening, if you recall, about where she slept, because she essentially kind of landed on the floor and wouldn't get into the bed. He also told you that when she got that last script, she used to sell some of her pills for Xanax. You have an autopsy and a toxicology to look at. The drug we're talking about was oxycodone.

So with respect to Ms. Boling, Agent Nocera prepared a summary chart kind of indicating who saw her during the course of her prescriptions there. Couple things I want to point out, she had tested positive for Xanax in the past. And on February 10, 2014, she told Ms. Clemons, she took a friend's morphine. And also contained in the clinic where there was no action taken was a discharge letter from a previous pain place for Methadone.

Again, Ms. Clemons wrote this prescription for oxycodone and OxyContin to Ms. Boling, which she did fill, pursuant to Mr. Hayne's testimony.

And then we have what happened to Ms. Boling. She had a 958 nanograms per millimeter of oxycodone concentration. Then she had the metabolite, the oxymorphone. Dr. Lochmuller

and Dr. Mileusnic opined the cause of death was oxycodone and the manner of death accident, supported by Mr. Hayne's testimony.

Yeah, they had a couple fights. It was over drug use. They came to a resolution. They fought about where she slept that night. This is no suicide, as Dr. Arden put forward. And he also admitted that more information may have changed his opinion. This was an addict. She used too much in her agreed-upon one and only party, and she overdosed.

Standing alone, the oxycodone, if you remember, from Dr. Lochmuller, Dr. Mileusnic was sufficient to cause this lady's death, even though she too had a heart condition.

Then we had Ms. Vann-Keathley. She's in Counts 4 and 14. She died on November 14th, 2013. She had been going to pill mills for years, including Lovell. She had back pain. She got addicted. This -- again, this ain't a suicide. It was the opioids issued by this clinic.

If you recall testimony from Mr. Keathley, they had that fight. They go to bed. She goes to bed, she wakes up in the middle of the night, 2:30 a.m. She comes back to bed. One doesn't start to overdose, and then wake up, go to the bathroom, and continue the overdose. What I would submit to you is that she went into the bathroom, probably hit her elbow, as Mr. Keathley testified, probably took some more pills, came back, and of course she's found in the morning by her family.

Agent Nocera prepared a summary chart. Again, you'll notice the pattern we talked about with all these folks, a lack of confirmation drug tests. You can also see she's missing more than she actually had. And you can see the different providers she saw in Agent Nocera's summary chart.

And, again, this is Ms. Newman who writes her a prescription for oxymorphone and oxycodone shortly before her death. And then, of course, you had the autopsy and the toxicology associated with Ms. -- with Ms. Vann-Keathley's death.

Dr. Lochmuller and Dr. Mileusnic opined the death was oxycodone intoxication, the manner of death, accident. Again, we just talked about Tony Keathley's evidence about her last days, argument over her drug use and her last night alive.

She had been benzodiazepines in her system, but the oxycodone, coupled with her heart disease, was more than enough to cause her death. And if you recall from the tox report, the benzodiazepines were in the therapeutic range.

Finally, we have Mr. Reus. He was charged as what we call an enhancement in Counts 4 and 18. And do you remember Sarah and Chris Kinsey? Sarah being his daughter and Chris who took him to the clinic before he died.

Do you recall Sara talking about all the stops they made and how her father was snorting drugs and the people he was selling them to? You recall how they were going out for

Chris' birthday, and they left Henry, both testified, very high, and he was cloning out some sort of milk on the floor, and they left him there. When they showed back up, he had died.

Agent Nocera, again, put together a summary chart associated with patient files. You can see which provider saw Mr. Reus. Again, you'll note, a lot of times he's testing positive for benzos, which I would submit to you would put the clinic on notice that this guy has an affinity for them or is at least taking a prescription they should know about.

If you recall with Mr. Reus, Ms. Smith saw him, but Ms. Clemons wrote the prescription. And if you recall from all the testimony, if you write that prescription, if you sign your name to it, you own it. It's your responsibility.

And then we didn't have an autopsy from Mr. Reus. We just had what I would submit to you was cardiac blood at 2400 nanograms per milliliter. Postmortem redistribution, which we talked about briefly, this is not the issue. She used an astronomical amount.

Dr. Bradley, Dr. Mileusnic opined the cause of death was oxycodone, oxymorphone intoxication, the manner of death, accident. Dr. Arden had a different opinion on the manner of death. This isn't a suicide. I mean, yeah, he had some stuff in 2011, but this is the type of case where I'm asking you to use your common sense.

He was out with his daughter. He was cleaning up the milk. That's not where he decided to commit suicide. It's exactly how they told you. He just took too much. He partied with too many customers, and he overdosed. I would submit to you that the oxy standing alone would be an independent cause.

With all four of these overdoses that we just discussed, finally, you recall Dr. Blake's testimony, testifying that none of the prescriptions in any of the files were submitted for a legitimate medical purpose.

And, finally, we have Mr. Joseph Russell. He's not charged in any of the enhancement or any of the counts. Okay. And the reason we proved him up is not just to add another two days to the case. The reason we're going to talk about him, he was deceased on November 8th. It was specifically Ms. Hickey, his sister, who kind of explained to you the drug problem her brother had and kind of how it changed their family. And she also told you one important fact. She actually called the clinic. And she told them that he and his girlfriend were abusing the narcotics before he died. There's clearly no action taken on that.

And then let's talk about Agent Nocera's count -- chart. Not a single drug screen in the entire file for seven months. He's taking benzodiazepines and opioids which ultimately caused his death, but with substances. And not a single drug screen, not a single question. And you've also got

his sister calling the clinic. And, of course, Exhibit 921A, Ms. Vanover is going to the same clinic. That's his girlfriend. Agent Nocera testified she overdosed.

He just demonstrates the dangers of Benzodiazepines and opioids, and he demonstrates the dangers of not treating your patient and not caring about their well-being. They were on notice via Ms. Hickey, and instead of doing anything, they kept writing him prescriptions. And we all know what happened. We can also see that Mr. Russell and Ms. Vanover were staging their visits, as Agent Nocera described, to keep them flush with medications. And then this is foreseeable. He's an IV drug user, and he overdosed.

Those are the drug conspiracies. Here's what the government wishes for you to take away. As a trained nurse practitioner, licensed by the state of Tennessee and the DEA, you have a duty to do no harm. And unfortunately for these people that died, these providers just didn't care. And because they didn't care, they fed the illegal drug market with millions of opioids pills and hurt the very people, like these folks, that they were there to help.

The good news is, with Counts 11, 12, and 13, it has two elements, those are maintaining a drug premises. First, the defendant knowingly opened or used or maintained a place, where permanently or temporarily. Second, the defendant did so for the purpose of distributing any controlled substance.

What this boils down to is, if you believe these places are pill mills and they're trafficking narcotics, then they are drug premises. And the defendants charged in each of those counts are guilty.

Now, with respect to Counts 14, 16, and 18, those are the substantive drug offenses. So there's an overdose attached to each one of those, but you can also find that the distribution was criminal, not for legitimate medical purpose, but find that the overdose was not a but-for independent cause of that prescription or you can find both. So you can either find simply the prescription is criminal or the prescription is tied either but-for or by independent cause to the overdose.

And so Count 14 is Defendants Hofstetter and Ms. Newman. It's oxycodone and oxymorphone. It's the enhancement for the death of Anna Vann-Keathley.

Count 16, this is going to be Ms. Boling. This is going to be Ms. Hofstetter and Ms. Clemons. Oxycodone, the enhancement of the death of Sandra Boling.

Finally, Count 18, that's going to be Mr. Reus. That's going to be September 8th, 2014, Hofstetter and Clemons, oxycodone, and of course Mr. Reus.

And, finally, I do want to talk to you just briefly about the money laundering and the RICO conspiracy, and we're almost done.

So with RICO conspiracy, this charges only Defendant

Hofstetter. And, again, it's a conspiracy. So it's the agreement that's the crime, not the substantive offenses, but just that agreement to do what these folks agreed to do. And it does not include the clinics run, Gallaher View 2 and Lovell Road, by Mr. Tipton and Ms. Hofstetter. It's simply those UCSC clinics.

So the -- when we talk about RICO, we use the term racketeering activity, which I'm going to talk to you about. But that -- in reality, Racketeering Act is defined by federal statute, just a bunch of crimes. So in this case, we're going to be talking about drug trafficking and money laundering. So it's got a fancy name, but the reality is, it's a type of crime that the statute says is racketeering activity.

So the first element, I've got -- the United States has to prove five elements. The first element is that the charged enterprise, the UCSC enterprise was or would be established.

An enterprise can be a legal entity, much like a corporation used to do bad things, but it can also be an association in fact enterprise. And that's what we have here. It's an informal organization that has a purpose, relationships among those associated with the enterprise, and lasts long enough to permit those people to pursue the enterprise's purpose.

In this case, the Urgent Care and Surgery Center

enterprise was created by the Italians and Mr. Tipton and Ms. Hofstetter. They ran pill mills to generate millions in illegal proceeds. And based on all the elements, I would submit to you this isn't in dispute.

The structure of the enterprise was the Italians, Ms. Hofstetter, and Mr. Tipton who was their Tennessee member. They had control of the hiring of various medical directors, sought legal guidance in order to keep the pill mills operating below the radar of law enforcement. And then you have Ms. Hofstetter running them on the boots of the ground. And then, of course, you had the providers who were writing the prescriptions, the office staff managing the business. This is kind of an analogy of Count 2.

Element 2 is interstate commerce. And that just means that the enterprise was or would be engaged in or its activities affected -- would affect interstate or foreign customers. This element really isn't in dispute. They went from Florida to Tennessee, and they distributed millions of opioids pills that were manufactured and shipped to pharmacies in both states. So this element really isn't a dispute insofar as the RICO.

Okay. Element 3 is that the Defendant Hofstetter knowingly agreed that a coconspirator would be associated with the enterprise. This just means that she agreed that somebody would further the activity. And in this case, the activities

we're talking about are drug trafficking and money laundering.

Not only did she agree to that, she actively facilitating the drug trafficking and money laundering done by the enterprise. She ran the clinics in Florida, she ran them in Tennessee, and she was the boots on the ground. So I would submit to you that this element has been proved beyond a reasonable doubt.

Element 4 is that pattern of racketeering activity we talked about, that she knowingly agreed that a coconspirator would conduct or participate in the enterprise's affairs through a pattern of racketeering activity. So we talked about those are simply the crimes that we're talking about. It's defined by federal statute. And in this case, we're just talking about operating those pill mills as drug trafficking, maintaining drug houses, and the money laundering that went along with it.

And the final element of a RICO conspiracy is that she knowingly agreed that a coconspirator would commit at least two acts of racketeering activity. So you just -- it's basically the agreement again that I -- that Ms. Hofstetter agrees that at least two racketeering acts would occur. And you have to find a reasonable doubt that either she agreed that she would do it or a coconspirator would do it.

These acts never had to be completed, however, in this case, we talked about 11 million pills and weekly

disbursements to the owners. So I would submit to you that not only did they agree, but they did it again and again and again.

So what this -- what the RICO conspiracy comes down to, and I'm just going to submit to you and the evidence shows is that Hofstetter and the coconspirators agreed to operate pill mills, and they meant to distribute high-dose opioid pills to paying customers for millions the profit.

So I would submit to you the RICO conspiracy dovetails with Count 2, and it's been proved beyond a reasonable doubt.

And the final things I want to talk to you about are Counts 3 and 5 which are the money laundering counts before you. These are intertwined with the drug trafficking.

So the bottom line is, if you believe these folks were drug trafficking, then the proceeds from that -- the moneys that the Count 2 took in, moneys that Count 4 took in are what we call specified unlawful activity. So if they're drug trafficking, they're also money laundering with the things that we're going to talk about next.

So Count 3 relates to the proceeds of specified unlawful activity to violate the federal drug laws in Count 2. So that's your Gallaher View 1, Lenoir City, Hollywood clinics.

Count 5 is the same thing, but now we're talking about Gallaher View 2 and Lovell Road.

So there's different theories of money laundering,

and we've got three that are contained in both Counts 3 and 5. Let me go back. The first theory is promotion. And what promotion means is that you're using the moneys taken in from drug trafficking to keep the conspiracy going. In this case, pay rent, hire providers, pay them, buy the supplies you need to keep the drug trafficking moving.

The second theory, and these are the elements in the second theory, we call concealment. And that deals with once you find your specified unlawful activity, what are they doing to conceal the true nature of those proceeds? And in this case, as I'm going to demonstrate to some of the exhibit, we're talking about those flow-through accounts, which have no purpose other than to kind of launder the money to the investors.

So Exhibit 807, as to Count 3, money laundering, that's what we're talking about. The use of the 9859 account to move that money from the clinic accounts from the patients who are paying for prescriptions to the investors for those weekly disbursements. And, again, Count 3, that's Gallaher View 1, Lenoir City.

Same with 808, Count 5, money laundering. It just looks a little different. But, again, you see the flow-through account in Bank of America account 4433 using to take those money from the clinics, from those patients, from those customers paying for those visits to the investors. And that's

Exhibit 808.

Counts 6 and 7, the final counts we're going to talk about, are money laundering counts. Those are substantive offenses. And that simply deals with taking money from a specified unlawful activity, which is drug trafficking, and using it to purchase something over $10,000. And we presented two purchases, one for the house, Exhibit 816, and one for a Lexus, Exhibit 821.

So I just want to conclude briefly. And I thank you for your time and attention for my very lengthy presentation to you.

But in the end, Ms. Hofstetter, she made millions and she dealt as many pills as she could to willing dealers and addicts, and the Knoxville streets were flooded, and we know for at least 11 million pills from her mill pills. Her goals were obvious, and she was able to lead a lavish lifestyle and gamble.

These three defendants contributed approximately 2 million pills to those 11 million. Each made a comfortable living by signing a piece of paper. They should have done their job right, because they had their patient's life at stake.

And in this case with these facts, it doesn't take a medical degree to know what each defendant was doing was criminal as to the thousands of customers that came to their

clinics. They had a duty to do no harm, and that's not what they did. They did harm, and they didn't treat anyone.

This is what happens, this case, this three months of evidence is what happens when a nurse practitioner chooses not to do her job. These defendants, all four, they became a deadly and integral part of the opioid epidemic here in Tennessee. And they threw the gates wide open, and they flooded the street with high-dose deadly opioids. They did it because they chose not to do the basic things any nurse of medical professional knows from their schooling.

So I would submit to you, in the end, this case is about choices and decisions. That's really what this boils down to.

Hofstetter, she made her choice from jump street, money for lifestyle and gambling.

These three defendants made the decision that $65 an hour was worth more than doing the job as taught. And when they all three chose not to be compassionate, and when they valued their paycheck over someone else's well-being, and when they chose not to care about their fellow man, they did harm.

And when they made these decisions, these choices, every day they walked into that clinic and they wrote a prescription, they became drug dealers. And that's when they joined the conspiracies in Count 2 and 4.

And in the end, all these four defendants had the

same priority, money over people, and they just had different levels of profitability.

For that, the United States is asking you to find them guilty of all the counts they're charged with in the indictment.

Thank you, Your Honor.

THE COURT: Thank you, Ms. Pearson. We'll go ahead and take our morning break. That's concludes the opening closing argument of the government. And we'll proceed with the defendants' closing arguments after our morning break. The jury is excused.

(Jury out at 11:13 a.m.)

THE COURT: All right. We'll stay in recess until 11:30. Let me ask, you are you going to go first, Mr. -- is Ms. Hofstetter --

MR. WHITT: That would be me.

THE COURT: Oh, it will be Mr. Whitt. So how are we -- everybody can sit down for just a moment.

MR. WHITT: I've got a little -- I'll go ahead and answer your question. I've got something I need ask about an exhibit.

THE COURT: All right. I'm sorry. So it's going to be Mr. Whitt and Mr. Reagan are going to go first and then Mr. Burks and Ms. Cravens.

MR. BURKS: Yes, Your Honor. We had talked to

Mr. Oldham, Mr. Rodgers to see if they wanted to follow in a progression of nurse practitioners. I don't think they want to do that, but if they do, then we'll go at the end.

THE COURT: That's fine. But anyway, Mr. Whitt, you're going to go up to about an hour.

MR. WHITT: Roughly.

THE COURT: So that will probably -- we'll do that, and then we'll take a break. And I'm flexible if you-all change the order given. But we'll -- depending on how long you go, that will probably take the break. And then we'll come back, and Mr. Reagan can pick up after the lunch break.

MR. WHITT: I need to be heard on something. I'll speak loud enough hopefully. The chart -- there was some summary charts that were proposed that were placed into that, and I was asking Mr. Reagan, Mick and I originally, we talked about these things, and these were regarding the death charts, he's summarized each one of those visits there, and in my cross-examination of him on those charts, I was showed the many discrepancies that occurred on those.

He came back and said we wanted to clean those up, perhaps, and we started talking about how to clean those up. And then he came to something and he showed them to me, and I came over and we had a discussion about that.

I said, "Well, you still don't need to put that one on here." I said, "You can get up again and I can

cross-examine you on it," I said, "but I can't agree to that."

I never spoke with anyone in any of the prosecutors on this case about that. And lo and behold, I realized that the original ones that were submitted were not what was placed before this jury. They were the ones that had been corrected.

I don't know what major emphasis that will have or what to do about it at this point, because as I was asking Mr. Reagan, I wasn't here at one point, and I thought, well, maybe they agreed that later on. But my understanding is that that was not an agreement, and that certainly it wasn't agreed to by me, and we didn't have discussions with any of these folks, I didn't, about that. And I just have -- I have some concerns about that.

MR. REAGAN: Judge, what we're talking about is the death charts. They were originally numbered 923 whatever, and then the charts that Mr. Nocera talked with Mr. Whitt about were labeled, for instance, 923A, and it was the A charts that were used in the closing, not the charts that were rendered into exhibits. I don't think the A chart -- the A charts were ever introduced as exhibits.

MR. STONE: I'll respond.

I'm pretty confused. All I -- I guess I was told there was an agreement. Mr. Whitt and I didn't talk. But at least from my sitting here, I know Ms. Pearson was going very fast. I don't know to what effect anybody, if there was an

issue there, that anybody -- there's a lot of information in those. It seemed like Ms. Pearson gave a gloss or an overview of those, spent a few seconds on each one. Clearly, the jury won't have this PowerPoint back with them.

So there's a misunderstanding, of course. I apologize. I was told there was an agreement, and, you know, Mr. Whitt and Mr. -- Mr. Nocera, of course, have a good relationship, and I didn't know there was an issue.

THE COURT: Well, the key seems to be, perhaps what is -- what is in evidence and what's going back to the jury? Maybe y'all can talk about that, and let's just make sure there's no issue in that regard.

MR. STONE: We'll make sure that's squared away. If there's not an agreement, there's not an agreement. We'll deal with that.

THE COURT: Does this affect your closing at all?

MR. WHITT: No, it doesn't. That why I said I'm not saying there's a huge emphasis or difference here. It's certainly not going to change what I'm getting ready to talk about. But at the same time, it's just -- it's concerning.

THE COURT: Let's just make sure.

MR. STONE: We'll deal with it.

THE COURT: You're saying it's not -- you're saying it's not the As that are in evidence, it's the originally numbered exhibits. And perhaps it was the As that were shown

during the closing argument in brief fashion.

MR. STONE: It wasn't part of mine. So I'm not sure. We'll figure it out.

THE COURT: Y'all look into that. Maybe over the lunch break, we can clear it up. Let's go ahead and take our break, so we can come back. I think it will work out timing-wise. The jury can hear from Mr. Whitt, and then we'll take our lunch break.

THE COURTROOM DEPUTY: All rise. This honorable court stands in recess until 11:30.

(Recess from 11:19 a.m. to 11:34 a.m.)

THE COURTROOM DEPUTY: This honorable court is again in session.

MR. REAGAN: Yes, Your Honor. We have an issue we need to address to the Court. During the government's argument, Ms. Pearson stated, talking about Ms. Fristoe, talked about her working there, said, I want you to think about the raw emotion you saw, especially from Ms. Fristoe, when they talked about working at these places years after the fact, you can tell with Ms. Fristoe, she felt the emotion of being in a small part, and then it says "in per pate waiting these places," according with the realtime transcript. That's not what that said. But the part I want to address is, immediately after that, Ms. Pearson says, guilt you never heard about from these three defendants.

That is clearly a comment on exercising our right not to testify. And we would ask the Court to declare a mistrial in this case because of that prosecutorial misconduct.

THE COURT: All right. Response from the government?

MS. PEARSON: Your Honor, that -- certainly in the context -- we were talking about the evidence, we were talking about the testimony, that was certainly not a comment on these defendants not testifying. It was not taken as such. It was dealing with Ms. Fristoe's testimony. So I would submit a mistrial is absolutely not appropriate.

MR. REAGAN: Judge, she said guilt you never heard about from these three defendants.

THE COURT: What about that? Respond specifically to that statement. I'll go back and review the testimony. But how do you respond --

MS. PEARSON: I would have to reread the transcript. What I meant by that is that their actions didn't demonstrate any of the remorse Ms. Fristoe said. I certainly did not comment about them testifying, them -- the lack thereof of that. It was simply related to the evidence in this case and the fact that they continued working there. And that's the context that that was in.

THE COURT: Anything further?

MR. REAGAN: It's pretty clear, Judge, guilt you never heard about from these three defendants. That's clearly

a comment on our exercising our right not to testify.

THE COURT: I'll take the matter, motion under advisement. I'll review the testimony. I'll take it all the defendants are joining in that request.

Okay. We're ready for our jury. Just before we bring them in, I know defendants have given time estimates on closing arguments. We didn't really pin down a specific time, but generally speaking, I -- and I think it was a request from Ms. Hofstetter, as well as the government, up to around two hours for their opening -- for the closings or the opening closings, so I've heard some 90-minute estimates. But I'm not going to cut you off, because generally speaking, I'm looking at up to two hours for each defendant, just so you'll know.

MR. WHITT: That's not going to be a problem for us.

THE COURT: Doesn't mean you have to use it. But that's kind of what we're looking at, just to be fair to everybody.

All right. Let's bring our jury in.

(Jury in at 11:37 a.m.)

THE COURT: Thank you. Everyone may be seated.

Now the defendants have the opportunity for closing arguments. The counsel for the defendant, Ms. Clemons, is going to present closing argument first. Mr. Whitt is going to go first on behalf of the Defendant Clemons.

And then that will probably take us to our lunch

break. And then Mr. Reagan will come back after lunch. So, again, I'm allowing multi -- parties represented by multiple counsel to split up their closing arguments if they desire.

Mr. Whitt, you may proceed with closing argument on behalf of the defendant, Ms. Clemons.

MR. WHITT: Thank you, Your Honor.

Good morning. On behalf of Ms. Clemons, I want to, first of all, just as the government did, I want to thank you for literally taking four months, what's been four months out of your life to come here each day and sit through and then have to go back there and sit and then come back. It's a difficult time. It's -- you add the holidays to it, and I know it's not easy.

But this is an important, important day for Ms. Clemons. It's an important day for all these defendants. It's an important day, which is why her family, as you know, her mother and father have been here every single day that we have and have come here, and a lot of the balance of her family is here today, because it is an important time. It's a huge, huge moment here in Ms. Clemons' life.

And I'm fortunate that we have -- and we're all fortunate that we have a system where the words of the prosecutor or the words of the defendant -- or as far as the defense counsel, our words don't mean anything. It's what you hear from the witness stand that means something. And that's

important. And that's important. Because it's not the argument. It's the substance of what you hear.

And we're going to have a little dispute over what -- the way I heard some of this testimony and what the government had brought forward just a moment ago. So we're going to kind of talk about that.

But the way I want to do, I'm going to get to a road map here in a little bit. I'm going to help a little bit with you. You're going to get some jury instructions that are going to be really, really long. It's going to take a long time to listen to them and to look through them. And they're kind of difficult.

And I do think the government did a fairly good job of showing you what some of those counts were. And it's difficult. It's kind of difficult work, I guess, to go through all those things.

I'm going to help you from the perspective of Ms. Clemons. But before I do that, I want to go through some things. I want to review some testimony, kind of going in a different order than they did. I want to start with the importance of -- and before we get into that, the importance of one thing, and that is, there's been a term that has been used literally hundreds and hundreds and hundreds of times, over a hundred times today so far, and I want to go ahead and get that out of the way now and talk about that.

And it's the term "pill mill." We heard this word from the very first time when the very first witness got up, and even before that, when the opening was done by the government. They talked to you about pill mill. They said pill mills here, pill mills there, pill mill, pill mill.

Then they get the -- Stanley Jones when he first testifies, he tells you that -- the DEA expert tells you what a pill mill is. And he told you that a pill mill was a pain clinic that actually dispensed medication from their facility, that that was a pill mill. But even after that, that was clearly not the context that the government wanted.

And you have to ask yourself about the word "pill mill." What's the reason for it? Must be a basis for it. Maybe it's in the statute somewhere. Maybe it's in those sorts of things. But it's not. It's not.

The reason why you hear pill mill over and over, and the reason why you continued to hear that terminology is not because they were trying to use it as a pain clinic. It's because there's a negative connotation to that word. There's a negative connotation to that word. And so why not refer to the clinics as pill mills? That way, you can start with your negative connotation in the beginning. And that's exactly what they attempted to do.

Even though they had the definition of really what one was, they expanded that definition to be a lot of things,

things with the red flags. And that's where Mr. Jones talked about things that are red flags in a pill mills -- in pill mills. What we're really talking about the pain clinics. What we're really talking about is pain clinics.

Pill mills are something that is defined after the point, after -- after all is said and done. That's something to be said for later on, if you want to use that definition. But we know the clear definition is it's for a clinic that actually dispenses their medication. We know this clinic never did that. We know this clinic never did that.

I do want to talk about, as far as Stanley Jones, because it started early. And it started with the fact that he conceded several things that are very important. And he came in and he told you-all that -- in my question of him, that it was in fact -- it's the DEA that releases -- that releases the quotas of any drug that is -- involved controlled substance medication. It is the DEA that does that.

And he also conceded that during the ten-year period leading up to the end of this -- at the end of this case, that the percentage -- that the percentage of oxycodone had gone up 400 percent. And what we mean "gone up" is, they had released 400 percent more of that medication into the United States.

Seems like a big number. And the reason why he said that is because the DEA had -- it recognized the need for that medication. The need for that medication, that's why they did

it.

If you remember what he said, if they wanted to cut it off at zero, they could have cut it off at zero. They could have cut oxycodone out if they wanted to. DEA has that power. But they didn't do that. They upped it because there was a recognized medical need for that medication.

So when we're talking about this, as we're going forward -- going forth, there was this recognized need. That was the lens. We're talking about the lens of today versus the lens from ten years ago or eight years ago. It is different. We see things different now maybe than we did.

But it's our job here today and your job as the jurors to see -- to see this case through lens of 2013, 2014, which is when these -- these prescribers here, these providers were actually working for these clinics. It's important that we do that. Not from today, because we see things different today.

Also, Mr. Jones talked about, which I thought was very telling, he talked about how the changing with drug dealers in their involved -- getting involved in diversion, and that is getting involved in trying to figure out a way to make money off prescription medication. They had gotten money off of the -- of normal, more recreational drugs, and he talked about in his experience how they tried to adapt to be able to take advantage.

And he said that was -- the reason why the drug dealers did that, and we talked about these drug dealers from the context of these people that were supporting people into this clinic, you've heard actually from quite a few of those people, these sponsors is what we're referring to, how they had come in and they were taking great chances, they were taking great risks, the risk of severe prosecution. And the only reason they would do that is for the money. And that's what he said.

They do that because the motivation for the amount of money that they might be able to make is there. And that's why drug dealer would do that, is for the money.

And I want to talk to you about that, because I want to talk to you about what the proof that you heard of what Ms. Clemons made in the context of her employment at this clinic.

She made $65 per hour. They did not take taxes out on her paychecks, which means she had to pay the taxes. Ordinarily, if you have a job and they're actually taking taxes, you're actually splitting that with them. But when you're a contract 1099 employee, you have to pay both taxes. So it's -- you have to pay a higher tax rate.

Got no vacation days, no sick days, no retirements, no health insurance, have to pay that yourself, no anything, nothing. Hardly the above-average compensation that the

government said in their closing a minute ago when they said they were paid at above higher grade.

The truth is, it's the exact opposite. They were paid a lesser grade. They were not paid any incentives bonuses. They were told, "Oh, if you see so many patients in a day, we're going to give you an extra, you know, $500 this week." That was not the proof. Did not happen. Didn't show you a single check, a single payment, a single voucher, a single nothing, because it didn't happen.

So to come to this jury today and say they were making above average compensation is absolutely false and inaccurate. It was less. And, therefore, it also was less motivation, because as Stanley Jones told you, there's a high risk. The punishment is high. You're going to do that, you're going to do it for the money. And they clearly were not doing it for the money.

When we get into the actual -- and I think -- I think, ladies and gentlemen, you can pretty much figure out what my role in this was, and that every doctor that testified, I ended up being the one to cross-examine them.

So that was kind of the role that I played was from -- and you're going to get some instruction where he talks about opinion testimony. In state court, we call it expert testimony, so I'm probably going to call it that, even though that's what this court calls it, only because I've done it for

30 years and I can't stop. So I'm going to refer to them that way, because in a way, that's what they are. But we'll refer to them as opinion testimony.

But that was my role in this case. In looking at that, one of the first witnesses that really fit that was Michael Carter. Now, Michael Carter was an academian, as we would call, had been around, retired, was a retired nurse practitioner. And there were a lot of very important things that he said.

Of course, one of the things that he conceded, at least seven times, I believe, in his testimony was this, that he had no experience or knowledge or expertise in chronic pain management. And he was -- actually also said he wasn't even familiar with the Tennessee Intractable Pain Treatment Act.

As a matter of fact, one of the, I believe, paraphrasing a quote here, he said, "I'm not familiar with pain management. It's not my specialty. So I don't know all the ins and outs, but I can tell you about wound care."

And he could tell you about charting, and he could tell you how to chart something from a classroom, from the academic standpoint, but he clearly had no experience in pain management. He said he had never seen what even the files looked like until he got them -- got here in this case.

And he also told you that it was his -- his experience -- I hid my water from myself -- he said it was his

experience that patients will come in and tell you about their medication and that they're going to be very honest with you about that. That was his experience.

He also admitted that when he talked about the visits he did concede the fact that you -- there's one responsibility for a first time patient, and then there's a different responsibility for a follow-up patient, that is that you require -- a nurse practitioner is required to perform a physical examination on a first-time visit, but is not required to do that on follow-up visits. We all knew that, but he confirmed that. So he certainly had an idea of what the duties of a nurse practitioner are.

But he -- when he started looking at these files, and he said that -- he admitted that there was an attempt, was his words, there was an attempt to put most of these elements in the files, but they didn't write enough in these charts to tell the full story.

So he started discussing what he -- what standard of care existed in -- on behalf of these nurse practitioners. And then before he started going through the files, he said something very telling. And he said, in assessing these files, he defined his rubric, as referred to it, as basically a measuring stick for did the feel meet his measured standard of care.

And that's what he analyzed those based upon that.

Did it measure up to his standard of care for files? And we know that he reviewed about 90 files, and we know that he said absolutely none of those files met up to his measured standard of care based on the rubric of his analysis.

We're going to get back to that in a minute, because it's going to be pretty important when I bring that together here in a moment.

He also indicated if you didn't write it in the chart, it did not happen. If you didn't write it in the chart, it did not happen. Well, he also says later on, though, that there's no way you can write everything in the chart or you'd never be able to practice actually medicine. But if it's not the chart, that it didn't happen. So that was the purview by which he was reviewing these files. Wasn't in the chart, didn't happen.

He had previously testified in one case before. It was a malpractice case. Had never been a part of a criminal case -- criminal proceeding before. And none of his testimony was directed at Ms. Clemons or the providers, because as you recall, he said that he wasn't even told who they were the names or anything else. So he was really looking at this from the perspective of just looking at the file versus who might have been in the file or any of those things.

He did admit that many of the criteria that he was looking at were best practice, because that's what every

provider should do. He admitted that he did not know all the standards for visits to a pain clinic. He said I can't speak to that.

And then he went on, and he talked about some of the -- some of these visits. And he talked one of the ones that comes to mind first, Mr. Burns, Danny Burns, he talked about that file, because he talked about the fact that ultimately Mr. Burns and his opinion was discharged from the clinic for benzos.

And then upon my cross-examination of him, I said, "Well, that's actually not a benzodiazepine. That's actually a contributor of cocaine."

He said, "Well, yeah."

I said, "He was actually kicked out for cocaine."

He said, "Yeah, but he had been on benzos the whole time."

Y'all may remember, I started going back through those visits, and I said there's no benzos here, no benzos this month, went back the next month, no benzos. I said, "Want me to keep going, or do you want me to tell you he never tested positives for benzos during this time?" I said, "You were just wrong."

He said, yeah, he wrong. He was wrong how he assessed that file and how he missed -- I don't know exactly -- I can't really speak for him how he was wrong about that, but

the bottom line is that he was.

He also said on cross-examination, he said, I have to keep telling myself -- we talked about this lens of today versus a lens of yesterday. He said he had to keep telling himself to look at it from the lens of 2013 and 2014 because the thinking today is much different about medication than it was back then. And that's important. And that's important because the thinking is different.

Dr. Blake testified. Dr. Blake testified, and let's talk about Dr. Blake. Obviously a very intelligent -- he knows pain management. He's got a good, successful, driving business in Chattanooga. He focuses on all of the -- all of the various modalities, the upper end modalities, we kind of call them, that is like surgeries and the injections.

And he owns a clinic that actually does their own physical therapy, as you recall. They also had their own psychologist at one time. I think he had just lost them, but they were looking for another one. They do all their own interoffice drug screens, whether it be the screens or confirmations. They do all of that inside that office.

And he obviously is a specialist and certified specialist in pain management. And so he talked about trying to compare -- to compare what his clinic was to what a general pain clinic is. And they are obviously two different things.

He admitted that his toolbox -- we talked about a

toolbox. His toolbox is much larger than the toolbox that a regular pain clinic that doesn't have all the specialties and modalities that his does has. And I think that's common sense.

But the government asked him if he was familiar with the standards of the case, as far -- as standards of care of -- as it applied to chronic pain management.

And he said, "Yes."

And the government followed up and said, "So when you're testifying going forward, are you applying these standards to your testimony?"

And he said, "Yes, ma'am."

And those standards of care that he were talking about were things like the pill counts, they do the pill counts every -- every time a patient comes in, they do their pill counts. He conceded the fact that there's no requirement by law or rule that that happen, but he says and that's what his office does, and therefore that's the standard of care.

He says they don't ordinarily issue pain medication on the first time. I believe Dr. Browder's office doesn't do that either. There's no rule that says don't do that or that you can't do that. But that's the way he practices in a best practice standard.

He says they do background checks. He thinks that is the standard of care, to do criminal history checks, those sorts of things. But yet there's no requirement that any of

those things happen. But that's his standard of care is what he had testified to.

The electronic records, he thinks is a standard of care, because they had had them since, I think, 2000 -- well, probably even before maybe he even went. I don't think he got out of school till 2009. So they may have had them before then, but -- and he talked about his exams and advanced exams are the standard of care, the heightened standard.

And that's important, because once again, we're talking about something called standard of care, quality of care. That's what Michael Carter talked about was standard of care. He talked about quality of care and best practices.

He went on to -- after he analyzed these files, he came up with the same result of analysis that Michael Carter had, in that these prescriptions, none of these prescriptions in any of these files were with legitimate medical purpose in the usual course of professional practice.

Now, when we cross-examined him, we talked about some things that -- and he did admit that different doctors do things different ways. Different doctors may see when -- you know, as it applies to pain management with -- as far as MED levels, for instance.

And we know that, because he said that he admitted as a partner, he and his partner had differences on that. And he said his partner has a different tolerance for high-dose

opioids than he does, because his partner was trained in the 1980s or before and felt way more comfortable with that than he did than when he was trained in the late 2000s.

So we know there's a difference of opinion. We know what his opinion was, and when he was giving his opinion, is he is someone that does not -- does not regularly prescribe high-dose MED levels. But he conceded that he had a partner that saw things different. And people do things, do see things different in that regard.

And we talk about how his partner was trained at a different time. I asked you to kind of look at that from the scope of Dr. Larson. Dr. Larson, who was a medical director of these clinics, obviously was an older gentleman who would have been trained at a different time, too, than what Dr. Blake was and very well comfortable with higher levels than what Dr. Blake would be comfortable with.

Different minds have different approaches. There's nothing wrong with that. There's nothing illegal about that. It's just a different way of viewing things.

There's a doctor -- I think we mentioned before, there was a doctor when I was cross-examining him, there's a doctor in Kentucky who had never given out pain prescriptions before. Never. Because he chose to do it a different way. Doesn't make him wrong. It's just a different way of doing things.

Now, he did make a fairly big deal about the language being spoken between the clinic and Dr. Larson. The government has kind of jumped on that again today, saying that these providers were intentionally, were intentionally disobeying his request to reduce MED levels. And they did that.

And if you recall, I think I had pointed out to you-all once before that there are different -- when you look at these charts, there are different writings on these charts that Dr. Larson would do.

And I think you-all will remember this, because I did this before. He may say "300" and circle it, he may say "300 high" and circle it, or he may say "300 high" with an arrow.

When you look at these charts, you're going to see that. You're going to see what each of these means, and Dr. Browder told you that it -- by reviewing those files, it appeared that 300 high was his threshold level. That's where he thought that it -- that was the high point of what he thought MED levels were. That's why he didn't put the arrow. If he put an arrow down, that was an indication to lower the meds.

So all these times, all these times when they're saying that these providers are intentionally, intentionally disobeying his request, that's inaccurate. That's wrong. And I'm going to show you one in a minute when we get into Mr. Reus' chart. You're going to see that the previous month,

it had said "300" and "high," and then it was Dr. Larson who saw him the next month. He didn't lower it. He kept it at 300, because that was his threshold level. So if he was telling them that high meant you needed to reduce it, then he certainly would have had the opportunity to reduce it, but he didn't do that. He kept it there, because he didn't put an arrow. That was -- that's the key. It was the arrow for him.

So for them -- for the government to tell you that that's what the communications from them were, is inaccurate. They weren't disobeying him. They were doing exactly what he told them to do. And that was the way in which he did it.

They also -- we talked about this before, too. They said -- the government used this. They said Dr. Larson wasn't on his game that day. They refer to him as being on his game or maybe he was on his game that day, but wasn't on his game another day. Every time they didn't like necessarily what Dr. Larson did, they said he was off his game that day. And it came from prosecution through the question. It really never came from the witness. It just came from the prosecution.

But they would say that. And that's -- I think that's a very disingenuous way of doing things. Because I don't think it tells the tale of what Dr. Larson was doing or not doing. You were just doing it -- seeing it through their own eyes and not through anybody else's. That's a disingenuous way, in my opinion, to reveal that communication.

Also from the -- he talked about window dressing. He talked about these files were window dressing, that -- and then when they came back as a rebuttal, he basically was telling you that everything they did was window dressing. I talked to him about the drug screens. What did he tell you about the drug screens? I said, "How many do you have to have a year?"

"Two."

"How many did they have?"

"Well, 10 to 12," I believe is what he said.

I said, "Now that would be window dressing if you were only doing two a year, the very bare minimum. Right?"

"No. This is window dressing here because they're doing too many."

Makes no sense.

I asked him, "Well, what about this window dressing you're saying when Ms. Clemons on multiple occasions with multiple patients asked for a full blood count panel to make sure of how the organs were reacting?"

"That's window dressing."

"How is that window dressing if it's for the safety of the patient?"

"Well, it's just for window dressing."

Couldn't give us an accurate answer to that. He just said it was window dressing.

I said, "And when they then -- when the person still

wouldn't go get that blood panel test, all of a sudden then there was the threat that they would actually reduce the medication if they didn't get it. Is that window dressing too?"

He said, "Yeah."

That doesn't make any sense. And then when Ms. Clemons actually did reduce -- actually did reduce an MED level for not getting that done, it was for the safety of the patient. There could be no other reason why that would do that. If this was what the government wanted you to think that it was, she wouldn't have cared two whatevers, iotas about that. They wouldn't have. She would have said, "Well, just keep your medication then. I'm not even going to -- I'm not even going to try to -- it's no concern to me if you don't want to take that test. Don't take the test."

But that's not what was going on. There was care being given. There was activities being given. There were referrals being given. But every time we addressed one of those, it was window dressing. It was window dressing. When you kick -- when she kicked 200 -- or 200 or so people out of the clinic, it was window dressing. Just because to protect -- they were just protecting the clinic by kicking the people out of the clinic.

I submit to you that that is just absolutely an inaccurate argument. That is not reflective of what was going

on. And it makes no common sense why you would kick hundreds of people out of the clinic when you know how much it is -- I mean, if this were just all about money, and clearly it wasn't to them, they weren't making them money, if it was all about money, then they would -- that's an extra $300 per visit times 200 people that she kicked out. That's not what that was.

So we get into -- with -- oh, before I do this, Dr. Blakely also had testified and he had talked about how the 300 MED level, that he had checked around the area, and that seemed to be the standard area. You'll recall his testimony about that. So there's a reason why that number also then carried into Dr. Larson when he had taken over to the clinic.

Dr. Browder testified. And Dr. Browder, also very educated, had been around a long time. I think retired back in 2018. But had a lot of experience. National award winning, as you were told, pain management clinic. We went through a numerous amount of slides with Dr. Browder. We talked about how he then assessed the clinics.

And if you recall -- I'm here behind the screen where I can't see it, so I'm going to move over here. You recall the clock that he gave you. And the clock is what he used in an effort to evaluate these cases. And you evaluate on the issue of legitimate medical practice in the usual course of -- legitimate medical purpose in the usual course of professional practice. And he did that.

And we got a few of those slides here. Well, I did have. Oh, thank you. Hiding.

I want to go over a few of these that we talked about, and then we'll get back to the clock. He talked about some general concepts. We talked about the treatment modalities. And so we've heard about those treatment modalities, and that is heat, ice, physical therapy, home stretching, durable medical equipment, for instance, TENS units, back braces, knee braces, those sorts of things, nonopioids, which is NSAIDs, those sorts of things, opiates and opioids, and then the more serious, more invasive maneuvers, the basic injections, invasive procedures, surgical intervention, those sorts of things. Those are the modalities.

And what we know is, and this is kind of the back to the difference in the toolbox that Dr. Browder and Dr. Blake had this clinic didn't, is this clinic certainly offered heat, ice, stretching. You saw this throughout the charts, throughout the charts. Of course, it was window dressing to Dr. Blake, but you saw it throughout the charts. You saw TENS units. You saw braces. You saw where people were either being given other nonopioid medication, and, of course, the opiates and opioids.

These things we know this clinic didn't offer, but every other one that they did. They didn't offer it, because they were not -- they had no expert that could do those sorts

of procedures. So this is all that they had. And they offered all of those, and they actually administered all of those.

Also, he looked at legitimate medical purpose, and he said that it is one or more generally recognized indications for the use of a controlled substance prescribed for a therapeutic purpose and used in the context of a practitioner/patient relationship.

One or more generally recognized indications, that is pain, for pain, is certainly a recognized understood case. And once again, and for the therapeutic purposes of fixing that pain, of relieving the suffering, and used in the practitioner/patient relative. Clearly those things occurred at this clinic.

Usual course of professional practice, individual acting as a health-care practitioner engaged in health-care activities to render medical treatment.

He talked about the activities. He talked about the things that were going on, and we're going to go through a couple of these charts. Bore you a little bit. But he talked about those things, those activities.

And -- but he also talked about the standard of care, and we put this up at that time. Standard of care is distinguished from usual course of professional practice. Standard of care is terminology affiliated with quality of care. That is inside or outside the standard of care generally

relates to malpractice cases. The usual course of professional practice means doing the things a health-care practitioner would generally do in accordance with the generally accepted practices in place at the time of prescribing. It does not equate to the constant use of best practices or gold standard.

That's going to be important. And the reason that's important is because you're going to be receiving jury instructions. This Court is going to instruct you, and as a part of instructing you, one of those issues is going to be on standard of care.

And first of all, I do want to say this, you were first showed earlier this morning, you were showed a slide here by the government that shows for a particular crime is the legitimate medical purpose in the usual course of professional practice, and then it said, comma, or beyond the scope of something medical practice or something like that.

Never seen that language before. I don't believe you're going to see it in any jury instruction from when this Court instructs you. I have not seen that language before. I believe all you're going to see is legitimate medical practice -- I mean, legitimate medical purpose in the usual course of professional practice. That's what you're going to see. That's going to be the standard.

But what you're going to also be advised by the Court is, the law is, you have heard the phrase standard of care used

during the trial by several witnesses. When you go to see a medical practitioner as a patient, the practitioner must treat you in a manner that meets the applicable standard of care that practitioners of similar training would have given to you under the same circumstances. If the practitioner fails to provide you with that care, the practitioner may be found negligent in a civil lawsuit.

This case is not about whether the defendants acted negligently or whether they committed malpractice. Rather, in order to find a defendant guilty, you must find that the government has proved to you beyond a reasonable doubt that the defendants' actions were not for a legitimate medical purpose in the usual course of professional practice.

So we told you when Dr. Browder, when he got up to testify, that this is not a standard of care case. And yet Michael Carter got up and said this is a standard -- my standard of care, as whether or not it meets the rubric of my standard of care. Dr. Blake testified over and over about his concept or idea of what the standard of care was.

But yet standard of care, and we refer to that also as quality of care, because some is higher than the others, that's not what this case is about. It's not about the standard of care and whether or not somebody might have dipped below on a particular chart or on a particular day, below the standard of care. That's not what this -- this is a criminal

proceeding. This is not a civil case where -- of malpractice or otherwise. And you're being told that by this Court.

This is something entirely different. This is when you quit becoming a healer and you at some point become a dealer. That's what this case is about. It is not about a standard of care and that's exactly what the government's witnesses testified from was the standard of care of what it was, and that they violated the standard of care.

This is different. And it should be different. You're asking -- you're being asked to judge on a criminal-standard basis, beyond a reasonable doubt, whether or not Ms. Clemons has violated the law in that regard. And you should use the appropriate standard. And that is, was it with legitimate medical purpose, and was it in the use of -- in the usual course of professional practice.

Also, in assessing that, there's another instruction that follows that regarding the state of mind. I believe government may have referred to it briefly, but it says, "Ordinarily, there is no way that another person's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking. But a defendant's state of mind can be proven indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted, and any other factors, circumstances in evidence that

show what was in the defendant's mind."

So what did Ms. Clemons -- when you saw her charts, you saw her requesting multiple times for blood counts, you saw her kicking patients out of this clinic, you saw her reducing MED levels for various reasons because they didn't get the MRI, because they wanted a new MRI, because they failed drug screens obviously, she kicked them out without hesitation. That's the circumstances that we're dealing with.

And the government would have you believe that's nothing but window dressing, nothing but window dressing. It's significantly more than window dressing.

I do also want to talk to you about the good faith that the government has told you you should ignore. I'll read that one again. "If a nurse practitioner prescribes a drug in good faith in the course of medically treating a patient, then the nurse practitioner has prescribed the drug for legitimate medical purpose in the usual course of accepted medical practice that she has prescribed that drug lawfully.

"Good faith in this context means good intentions and an honest exercise of professional judgment as to a patient's medical needs. It means that the defendant acted in accordance with what she reasonably believed to be proper medical practice.

"In considering whether a particular defendant acted with legitimate medical purpose in the course of usual

professional practice, you should consider all the defendant's actions and circumstances surrounding it."

It's exactly what we're talking about with Ms. Clemons. You should do exactly that. You should see the things that she was doing with these patients each and every time that she met with them.

No defendant has to prove to you that she acted in good faith. Rather, the burden of proof is on the government to prove to you beyond a reasonable doubt that the defendant acted without a legitimate medical purpose outside the course of professional practice. We don't have to prove that she did. The burden is on the government. We don't have to prove anything, but yet here we are.

And I'm telling you that good faith applies in this case. It clearly applies. It is not something that you should ignore. The judge is going to instruct you to this, and it's not something you should ignore.

I want to get into a few of the charts from the standpoint of -- I'm going to kind of combine two things and do it this way. We're going to combine talking about some of these death-related charts, and in that context, try to show you and go through a little bit of what we've done with the -- with going through clock that Dr. Browder and Mr. McCoy had gone through.

And I have missed out on talking about Mr. McCoy's

testimony. And one of the reasons why I wanted to save a little bit of that, because Mr. McCoy was up here over the course of a couple of days, and he testified about a lot of things. He testified that his analysis of these cases was similar to Dr. Browder's, in that how he viewed and how he set out to assess these cases.

But he was asked a few questions, and he was -- and the government has brought up today this issue of subjective versus objective. And they tried to say, well, he's changed his mind about this or he changed his mind about that. I submit to you, that if you listen to what he was saying, what he was testifying to, the difference between subjective and objective is, he was very clear to the fact that it was objective from the standpoint he certainly had rendered an opinion before ever met two of the defendants.

I know he told you he -- it was a chance meeting, it wasn't a planned meeting, that he ran into them and he asked them a couple of questions. But he already rendered his opinion well in advance before he ran into those -- ran into the ladies that day.

But he said that subjective is because everything is subjective when you kind of look at a chart. And it kind of makes sense when you think about it, that is that if you're a provider or if you're a nurse or whatever and you're looking at one of these charts, you're basing it on, obviously, the

information that you're getting, but you're also basing it on a radiologist's opinion who has given you something and you may be getting a record from someone else, so it's subjective from the standpoint -- or there's other opinions have been injected into that process.

And then he's given -- and then he said, "Well, I'm giving you my opinion. So if it's my opinion, it's subjective. It might be base on objectivity, but it's my subjective opinion."

That's where it went south. That's all that ever was. It meant nothing. It was all the same standard. It was all an objective review. It was all an objective review.

So -- but then they played, and they tried to end with him by playing a little game on whether or not he had called these -- called these clinics pill mills. And you wondered why they had to do that, because what happened is, is they had gone back, and way back when in this case, and tried to hire him to be the one to give analysis to you. That's what the government was doing. And in that analysis or in that -- or in that request for analysis, he sent them an e-mail back declining to do that. And merely referenced what the government had already referenced to him about the Hofstetter pill mill case.

They didn't ask you that question, though. That's not the question they asked. They presented that in a fashion

when they asked him, is, did you call -- you recall referring to these places as pill mills? Totally different question. Totally different question.

Why did they do it? Ask yourself, why did they do that? They wanted you to think that he at some point in his time had called this places pill mills. That's what they wanted you to think. No idea how they were going to pull that off, and they didn't, but that's what they wanted you to think. There's no other reason to bring that up. Why even bring that up? Whey even bring up the fact that they had tried to hire him on their side? One of those things that makes no sense.

Another thing that makes no sense, the repetitiveness of referring to talking about the Waffle House on one side and the adult bookstore on the other side, which they would refer to it -- call it the porn shop, or the porn store -- the porn store. No significance to that whatsoever. No significance to that whatsoever. That happened to be the store that was next door.

But yet you get flooded with that. You get flooded with that. Remember what we talked about at first? We talked about, you know, how the -- that the superfluous use of pill mills. Pill mill, pill mill, pill mill, pill mill. Porn store, porn store, porn store.

It's this effort of the government to get you to try to see something that it's not. Almost subliminal to get you

to believe that this is negativity revolving around this area, when it has nothing to do with anything.

It has absolutely nothing to do with anything, that there was an adult bookstore next to this location. Nothing. Has nothing to do with legitimate medical purpose. It has nothing do with usual course of professional practice. Nothing.

The charts -- the death-related charts that they talked about -- the first one was Carolyn Hayes. I'll be relatively brief with Ms. Hayes, although I certainly have some opinions on that. Because Ms. Hayes passed away almost two years before these ladies became involved in this clinic, year and a half, two years, whatever it was. However, I do want to bring up a few of the things about the -- that particular case that you may obviously remember.

And if you recall, Ms. Hayes was the lady that went -- she had court on that particular morning, and she went to court. She had lived with Ms. Shockley. But she went to court, and she had some episode at court where she fell down or almost fell down, almost passed out, or something. That's kind of unclear from the paperwork. But then they took her to the hospital.

And then Dr. Robbins came in and testified about how he had given her Narcan, because she appeared to be out of it when -- by the time that he had seen her. And so they gave her

the Narcan.

And you remember what he did, though? He gave her the Narcan, and then he instructed her -- and he instructed her to use your medication, you know, go home and use your medication as prescribed, and he underlined it twice. And I asked him why he underlined it twice. Well, wanted her to know to use it as prescribed. But he told her to go ahead and use that medication and go home.

Well, what we know, if you believe Ms. Shockley is, of course, Ms. Shockley said that she made it home about noon. Well, we all know that that wasn't right, because she was at the hospital till four o'clock in the afternoon. But Ms. Shockley said she came home about noon.

Ms. Shockley said that she was given a ride home by a man that she knew him to -- her to have drug activities with. Yet the hospital record, if you saw, that it was a sister-in-law, family member, a female family member is the one that actually took her home. So can't say who is telling the truth. None of us will ever be able to do that.

But here's what you can do. You can, if she realized that she got home, allegedly, she -- according to Ms. Shockley, that they snorted pills when she got home. And you know that she was with -- you know that that's not the way they were prescribed. We know that. But we also know that by the time she gets home, she's been with a man that she had done drugs

with, according to Ms. Shockley. We don't know where those pills came from. We don't know where any of that medication came from, that she was there.

And under the instruction, it has to be -- the causation of death has to be the actual prescription, the actual prescription. There's no way in the world, kind of like the Reus case we're going to talk in a minute, there's no way in the world to know where those drugs came from.

Was that prescription from this clinic? Was it prescription from the other folks that are in that house, all of which were admitted drug users who said that they regularly traded back and forth? Was it the man that had given her this ride home, belonged to him? Was it this -- the family member who we don't really know was there at the hospital with her? No way to know that. No way to know that at all.

But the second case I want to talk about -- and the government is right, they haven't -- they haven't used that as a substantive count or anything here -- is the Joseph Russell case. And I bring that up because very clear, very clear what happened in Mr. Russell's case, other than by taking medication that didn't belong to him, and taking -- that he wasn't even prescribed to with the benzos, but also there was a note -- there was a note on that -- on his nightstand.

If you remember the pictures, there was a picture of the belt. Showed you the picture of the body of Mr. Russell,

and there was a belt there that would have been used to inject. And we know in fact that he did -- that he was an IV drug user, because Mr. -- Dr. Lochmuller testified, who did the autopsy of Mr. Russell, that there were all sorts of sediments of stuff that indicated, you know, IV use. So we know he was an IV user.

But we know from that note on the nightstand that it was -- the girlfriend had said, "Here's the Rs," the Roxies, "please be careful." So we know where that medication came from. So not that that one matters, it's not charged, but it matters from the standpoint that this was the behavior, this was the behavior of Mr. Russell, and it was not the medication that was prescribed to him by the clinic.

I do want to talk about Anna Vann-Keathley. Now this is where I'm going to kind of go into the clock a little bit. I'm going to talk about Ms. Vann-Keathley relatively shortly. Once again, Ms. Clemons never saw her. But I do want to use this as the means by which, if I can, make this a little bit smaller, to show what we -- what we were doing.

Now, Ms. Vann-Keathley was at the clinic a very short period of time. Only made a few visits there. But what I want to do, if you remember what Dr. Browder, and then had said, is you start here at the physical -- I mean, at the history and the physical evaluation, and we know from the -- and by the way, this is Exhibit 922, I'm guessing, is what we've written

down here. I hope that I'm right about that.

Anyway, on Page 6, so -- and like I said, we're not going to go through this whole thing. But this is an indication of what you can do. And this is what we've done -- or what I've done in this case. There was a request for medical records in there. That's part of the history and physical evaluation.

On Page 38 through 40, there's the initial patient interview showing prior treatment modalities and the pain history.

Page 41 is the MRI, so we know that we're -- a history and a physical evaluation. We know that these are the things on there that are being performed. They're being performed. There is the physical examination, you have to look at actually the Pages 38 through 40 to see, but you'll see that there was a physical examination being done, as would have been required. And so -- and once again, requests for medical record and otherwise.

Then we get down to the risk assessment and treatment plan. There was two separate DASTs done. But there's more than DAST. Risk assessment is more than that. Okay. It's not just a DAST. There's -- here, there was the pharmacy and prescription drug profile done. That's part of risk assessment. That's absolutely part of that. And that was done on Page 42.

Then you have on Page 39, there's the initial treatment plan, including the request for a new MRI in the treatment plan. And on Page 75 through 77, that's the new patient drug screen, which means when that patient came in, when Ms. Vann-Keathley came in, she was administered a urine screen that would have then -- of course, almost all the time they sent those off for confirmations. Didn't always get them back, and we'll talk about them here in a minute.

Then we refer to over here on the informed consent and treatment agreement, we have two different ones here. So clearly, clearly that was a part that was engaged here in this -- the activities here between the provider and the patient.

The periodic review of the plan and ongoing risk and monitoring. And we talk about that here in 35, 36. That's her first follow-up. She got the updated MRI for the treatment plan from Methodist medical center. First -- well, that's when she got the MRI was -- 4/23 is the first follow-up visit. And she got her drug test, a PMP was checked. Treatment plan was gone over.

Also Dr. Larson sees the patient for following drug tests reviewed, PMP marked as no data. He notes, however, osteophyte impinges on L4 nerve root as rational for opioid use, continues the plan. Once again, that's the basis, that's the basis for which the pain medication was prescribed, was the

client's description of pain, along with a very clear radiologic support as well.

Patient pregnancy test was done on that occasion. Patient advised that the clinic would no longer prescribe benzos or Valiums to her. So they cut -- that's when they just eliminated those from her practice. If you remember during about this time, we saw multiple files where they were being -- where benzos were being removed. I think we've heard from several experts why they would do that. They don't always act as a good sandwich, if we remember that. Sometimes it's a bad sandwich.

So they removed her from the benzos. Once again, there's a safety issue. Once again, it's medical decisions that's being made by these providers to do that. This is part of the patient provider relationship here. The activities that we see that is part of medical decision-making to make these decisions. It's not just willy-nilly window dressing. These are decisions that are being made.

The use of referrals. Here we had the referral for the MRI. Also in Page 45 through 47, there's a request for TennCare, for prior authorization. And then looking to place patient on long-acting medication, and TennCare approved that.

The medical chart showing that provider relationship that I was just talking about, that's the -- that's basically the entirety of what's in there. That's what I'm talking

about, this provider/patient relationship and all these things that go together to combine.

Then we get up to the top. So was there one or more generally recognized indications for the use of a controlled substance? And clearly there was. We knew there was touching on the nerve root at the T4. We know there was MRI, even a new MRI from Methodist Medical Center to update that, and that there was the claim of pain, and that's why she was given a prescription. And that is with legitimate medical purpose acting in the usual course of professional practice. That's what it is.

Now, the government would have you believe that that standard of care is lower than what their experts believe, but the activities are there. The practice is there. The decision-making is there. The provider/patient relationship is there. All of those things are contained in there. This is not a malpractice case. This is not a standard of care case. This is legitimate medical purpose. That's what this is in the usual -- acting in the usual course of professional practice.

Ms. Boling -- only two more of these. Ms. Boling similarly -- that's hard to see, isn't it? All right. I'm going to have to do fancy reading. I don't even think these glasses are going to magnify it to help me out here.

I'm going to start here. I won't necessarily go through each and every one of them. But we start here with the

history and physical evaluation.

Once again, the reason I'm doing this, the reason I'm doing this is not to go back through the chart again. The reason I'm doing this is to show you the manner in which Dr. Browder and Mr. McCoy assessed these files, which is different and contrasted from the situation or from the analysis that Michael Carter and Dr. Blake did. Because it is different. And the reason it's different, because once again, it's not a standard of care case. It's not a malpractice case. It's a criminal case.

So we got the history and physical evaluation, request to prior pain provider to get records. For request, they had the prior imaging, lots of prior imaging from 2006, 2008, 2010, 2012. Tear in shoulder, and that was verified by the office. The office went and verified that and marked it was verified. So it's not window dressing.

Initial patient interview showing the prior treatment modalities and the pain history. Talked about all those things. Once again, there was an examination that was performed. Physical examination, as would have been required.

Then we get to the risk assessment and treatment plan. There was a DAST, a pharmacy prescription drug profile again that we got. Once again, it goes towards that risk assessment. And then a treatment plan was showing extensive counseling regarding her previous use of a drug. And that was

actually in the treatment plan.

And they gave her a new drug test and a report. Obviously, then she has also signed the informed consent and treatment agreement. And then they had a periodic review.

And one of the important things that -- in this particular case, in this periodic review is they immediately -- on the first follow-up visit, they immediately began weaning her off of the benzos. She had been given previously at the other clinic, she had been getting 60 of those a month. After that first month, they knocked her down to 30. The very next month, they moved it down to 15. And the very next month, they cut her off at zero.

Medical decision-making for the benefit of the client to do no harm to the client. You don't just ordinarily take somebody off that quickly of benzos. But you do that because it can be dangerous. Right? We know that from what the doctors have testified to. So they took it and they cut it off over the course of 90 days, and then they removed her from the benzos. There's nothing window dressing about that, folks. Not one thing about that is window dressing.

Subsequent visits, talked about how morphine had upset her stomach. There was some changes being made. Oh, yeah, there's an important one, January 13 of -- visit. She saw Ms. Clemons and said that she had ran out of medication and taken a morphine pill.

And -- but as part of that provider relationship, that patient/provider relationship, she was actually honest about that. And she told her that she had taken that medication. So it wasn't any surprise by her volunteering that information that the following month's confirmation, when it came back, showed there was morphine in there. Well, she told her it was going to be there.

So she came back, but then -- so came back in the following month in February. She sees Ms. Clemons. That's when she -- that's confirmed. And here's what they're doing, they're trying to help her find an orthopedic surgeon. Talking about her PCP is.

Because for the couple of months there, she's trying to find with her BlueCare, I believe is what she had -- yes, she's trying to find it with BlueCare, which was the Medicaid. She was trying to find somebody that would do her surgery, her shoulder surgery. She's trying to find somebody to do that, and was having some difficulties, somebody taking her insurance.

So she was working, they were -- this coordination of care that we talked about, how the clinic with the PCP and her insurance trying to get together to find somebody to find the right referral to somebody that would take it.

So that's what was going on, once again, during these visits. And keep in mind, on these follow-up visits, it

doesn't have to be physical examinations, yet almost every time there still was some type, almost every time. Not every single time, but almost every time, there was still physical examinations when they needed to do none.

And the use of referrals, we just talked about that. There were lots of referrals. The medical chart, we know it showed -- clearly showed provider/patient relationship, because they actually had developed a relationship to the point where obviously the patient felt comfortable enough to share that she had taken a pill that she wasn't supposed to. She was counseled on that. It was documented in the file, all those things were done.

Because those things happen. Every doctor that got up and testified would tell you that those things happen. You know, you're going to have somebody that takes their friend's pill, that takes their neighbor's pill, that takes their spouse's pill on occasion. It's going to happen. And you have to counsel them. It's the best thing as a provider is what you do, you counsel them on that. And this was the first time that they had ran into that, to that particular issue.

And so we had the one or more generally accepted indications for the use of controlled substance, that is for the shoulder problem, which was confirmed by November 21st, 2013, tear in the shoulder.

So once again, the practices that these providers

showed, the interaction between them was not a case of window dressing. Might there have been things better that they could have done? I'm sure they could. I'm sure -- almost everybody -- I'm going to sit here when I leave here today wishing I had done that. Everybody is going to do that. You wished you had done better.

But you have to look at the -- you have to look at what they did. And they certainly did in good faith to try to help their patient, to try to make changes, to make medical decisions for their patient.

Folks that are making medical decisions, that's not drug dealers. These -- those are two totally separate things. They're healers, not dealers. That's what they're doing. And that's clear from these files that's what they're doing.

The last one I want to talk to you about is Mr. Reus. And I want to do that for a couple of reasons. First of all, when -- I didn't want you to just take my word for it when I told you a minute ago that in the Reus file I was going to show you about the 300 high doesn't necessarily mean that Dr. Larson intended on lowering it.

Here is the -- this is the January -- this is a January visit where Holli Carmichael -- where Holli Carmichael had seen Mr. Reus. You can see that, and you can see here where "high 300," and it was circled. Everybody see that? So that's January of '14.

I'm going to move you to the very following month, February of '14. And it's Dr. Larson. And if you can -- almost got it straight to the 300, did not lower. Did not lower it. If he was so frustrated by these folks doing this, why this? Why didn't he lower it?

The reason is, is because the clear indication of the practice and communication between Dr. Larson and his providers were, it's the arrow is what matters. That's the way he did it. That's not -- that's the reason. The 300 was his comfort level, just like Dr. Browder said that it was. Because you can see from the files that that's where they are.

And with Mr. Reus, I'm -- we've heard a lot about Mr. Reus' file, so I'm throwing that up there -- oh -- but I want to get straight to a particular part of this, and I'm not going to go through all of these, it's the same that we had seen, but I do want to get to something.

Mr. Reus' last visit was September 8th, September 8th. I want to go to a June 30 visit. We talked about this. We talked about this at one time. And then I had a witness up there that didn't know everything about it, and so the Court said, well, we'll wait on a different witness.

And what we ended up doing is this, I want to go back to the June 30 visit. Because on June 30, he goes into the clinic, and they -- and he gets a -- obviously gets his prescription, and they do a drug screen, drug screen on

June 30th. They send it off to the lab. So when he comes back in July, we're expecting to see a confirmation. Right? Because they requested a confirmation.

We know, however, we didn't always get these confirmations back. But we also know from Shannon Hill, we understand that she wasn't always playing on the up-and-up. So we come back in July -- here we go. We come back in July expecting to see the confirmation from June 30th. Right?

Let's make this bigger. And this is actually in the file. We knew this already. I'm going to -- it may be difficult for you to read, but I'm going to tell you this right hear says "6/30/14." Okay. So this was the -- this was the original of what was done there.

And then it was sent off, and then you see there was -- when we come back in July, there's no confirmation, but instead you see this, "Sample leaked in transit." That means sample leaked in transit, which means there was no confirmation. Right? If you're a provider, leaked in transit -- in transit, there is none.

And we know that Shannon Hill -- Shannon Hill was the one who -- well, that's her initials right here, by the way, "SH" for Shannon Hill. She's the one that wrote that. She's the one in charge of that, so she's the one that wrote it.

So all we know is, by looking at the file, is that comes back for July, and we've -- we've leaked in transit, so

we don't know what it would have been. Except for -- except for the fact that -- remember those boxes? Remember those boxes of missing screens and confirmations and stuff that weren't in the file?

Well, lo and behold, I found one. This is not till after the fact. We found the June -- the June 30, what should have been in this file, what this provider should have seen, and here it is. It's a two-page. I'm going to -- just so we can -- kind of hard for me to do that, guys. Let's do this.

We show right here a collection date of June 30. Now, keep in mind, Shannon Hill said this thing was leaked in transit. That's what she said. But here it is, never for anybody to see, except was found in a storage room, I guess, where Ms. Hill would keep these clandestine things.

And what's it positive for? Well, lots of stuff, folks. We got Methadone right here. Let me see if I can make that bigger for you. We've got Methadone, EDCP, we've got the oxymorphone, obviously, the morphine, all kinds of stuff, all kinds of stuff. And that is kept from this provider.

That is not on the provider for someone to take it upon themselves to criminally inject themselves to hide a document like this that could be so important, and that's why it was done. That's why you didn't find it anywhere near this file. That information could have been used, could have been acted upon, but it was hidden, and it was hidden by Shannon

Hill and lied to by Shannon Hill so that the provider wouldn't see it, so that Shannon Hill, I guess, could make her extra 50 bucks.

So then we come later on, and we -- to the September visit, the last visit, and he actually sees, he actually sees Donna Smith first. Here it is. So we get to his last visit. All right. You actually see this little "DS" right here. That's Donna Smith.

And Donna Smith originally had given him a prescription for his regular 300. You see the 300 right here. Had originally gave him a prescription, but you look in the back of the -- and you realize it wasn't accepted or there was a problem with it, so he comes back to the clinic, and that's when we see -- and the government showed you the prescription that was actually written was by Ms. Clemons.

But when Ms. Clemons came back, she knew from the previous month she had already warned him. She had already warned him about the new MRI. She had already warned him about getting the other records. So he comes back, and she reduces him down to 180. She doesn't give him the 300 like Donna Smith had done when she met with him.

She actually came in and said, "No. He doesn't have the new MRI. He doesn't have this stuff. 180."

And so he walked out of there with a reduced, almost in half, prescription.

I ask you to consider the things in the totality, as the instruction tells you, to consider what that patient/provider relationship was. It was clearly one where she's trying to make the right decision for her patient to do no harm, to do no harm. She has made a medical decision and a good one. Sometimes we make good decisions, bad decisions. Legally, we make good decisions, bad decisions. But made a good one and was doing the right thing for her patient, even though there were bad actors actually at this clinic. Lot of them pled guilty.

But the bad actors aren't these providers over there. The bad actors are the ones that were trying to manipulate. And what ends up happening to Mr. Reus? He gets half his medication. He and his daughter go out the following day and go around, and he trades them for -- and trades his medication for benzos, trades them for other medications, sells them, does all these things. She doesn't even know all the stuff that they're doing.

That night, actually the night of, she has -- you know, she's having to step over him and laughing as she's stepping over him. Could have injected herself into that and done something, but I'm not going to -- I'm sure that was hurtful enough. I'm certainly not going to judge her for her actions that day or how she handled her relationship with her father.

But she sees him after she's taken him and driven him around all through Newport to sell and trade these drugs. And now we get to the issue. Well, now this is a count. Now, this is a death enhancement count now.

So you look at the test. First of all, were these medications -- were these medications the medications that caused his death? Well, how in the world would you know that? How in the world would you know where this medication came from? Admittedly, according to the daughter, traded, traded for benzos, traded for other medication, obviously morphine. You know, there was multiple drugs he certainly wasn't prescribed by this clinic.

So how can you say that his -- that those medications, those prescriptions calls for the but-for test for the death of Mr. Reus? You can't. Not only is it not logical or rational, it's certainly not proof beyond a reasonable doubt. There's every doubt in the world to question where in the world those drugs came from.

Once again, I've showed you some of these charts. I showed you the different way, because I think it's important. I think it's important that you understand that what it is that we are here for, and it's not to determine whether or not -- and Dr. Browder and -- said it best. "I have some problems with these charts. I would like to see this. I would like to see that."

So when the government is talking about the struggle, there was a struggle that he had with some of the charts. But the -- this is not malpractice. This is not an issue with malpractice. This is an issue where you look at the activities. And when you look at the clock, and you go around that clock, and you look at the things that the providers did, and you look at the -- they followed all the rules and guidelines as far as that were required. Says you have to have physical examination. Did all those sorts of things. Risk assessment, did all those sorts of things.

As a matter of fact, I wrote the four that the government had put up, appropriate history, physical exam, diagnosis, and a treatment plan and follow-up.

Those things exist. They may not exist to the level of what Dr. Blake wanted them to be. But that's quality of care. That's the quality of care, a standard, a best practice, any of those things.

That's not why we're in this courtroom today. That's not why. We're here on a criminal case, seriously. And these providers are on the line on a criminal case, not a malpractice. This is the manner in which you have to judge this.

You listen to these instructions, which will tell you this is not a standard-of-care case. And there's no way to get around that Dr. Blake and Michael Carter clearly judged and

assessed these cases on the issue of standard of care, because they say they did. That's not my opinion. They said they did. I got to cross him on it. I just let him keep going. He said standard of care. Keep going.

That's not it. That's not why we're here. That's not the standard that we use in these courtrooms, in these criminal courtrooms on this type of case. That's not it.

I do want to talk just a few things in closing, just to kind of counter a few things that the government talked about on theirs.

They called Lovell Road the worst of the worst. That's where Shannon Hill and Stephanie Puckett worked. That's the file I just showed you a minute ago, where Shannon Hill is the -- is the -- had kept that particular -- kept that particular confirmation screen out. That is the worst of the worst. What she did in compromising these providers in this clinic and everybody else in here, what that -- that is the worst of the worst.

And what strikes me as more surprising is that they will in here, get up here to testify against the very people that they were lying to and keeping stuff from, to hope you to get -- to hope you will get to prosecute them so that they might be able to get a little bit less time. That, too, is the worst of the worst.

Talk about all the Blumenthal e-mails. That was

years before these girls ever even went to work -- or these ladies went to work there. I'm getting old now. Everybody is girls. My daughter turned 21 last week, so I'm getting a little scared.

We talked about Marc Valley. He was -- that was also there before Ms. Clemons ever worked there. Talked about the government referred to the tons of other modalities. We talked about the modalities. I had nine of them sitting up there, and six of them we offered, three of them we didn't. We told you why we didn't. They clearly offered other modalities. They're required to and they did. Might not have been injections, might not have been surgeries.

Another surprising thing that I saw up there, talked about Cam Patterson was under the addiction or dealer group category. He may have said he bought one pill or sold one pill. Maybe that's what made him a dealer or something.

But his case was clearly different. Cam Patterson came to this clinic as an option, having been to another clinic, as being given an option that you either need to take medication or you need to have surgery.

And we know from the Intractable Pain Treatment Act that you don't have to take a surgical option. Okay. Don't have to do that. But he goes to take the opioids, and he does that for a while, and they bump him up because he's in pain. Well, heck, yeah, he's in pain. I had the same surgery.

That's painful. We talked about that.

He ends up having to have the surgery in June. But then what happens, he doesn't get full relief, so he comes back to the clinic, and he starts up having to take medication. And the reason why is because he ended up having to have a follow-up surgery, and these things happen.

He was a person who clearly had -- clearly had an injury. He clearly had pain. He properly described his pain. He was properly treated, and yet they're going to look at this file and say that it's without legitimate medical purpose and not the usual course of professional practice. Makes no sense. He is a legitimate pain, has legitimate pain that required surgery not once, but twice.

How can that be window dressing? Wasn't window dressing to him, I'm sure. But he said his pain was legitimate. Not sure why he was up there in that.

And, finally, they talked about -- and we kind of briefly discussed that, that they ceased being nurses at all, that they ceased being providers at all.

I guess the last thing that I would tell you is, along those lines is, and I've said this twice already, and Mr. Reagan may even say it again, dealer and healer, dealer and healer. Big difference between the dealer and a healer, a big difference.

They've suggested to you that these are nothing --

they're not healers. They're window dressing to try to make the money, make an above-average wage, which they weren't making. When you look at all of the totality of their -- of their work.

And you can count the pills. They gave you that to count them. It sounds like a lot. Over the course of a lot of patients, it does add up. Notice, we didn't see other people's numbers. We didn't see Dr. Blake's to see how many -- how much medication they had dispensed either, down here in his clinic with 22,000 patients. Didn't offer that number in comparison.

It is a lot of medication. But for -- but for it to have -- they had 6,600 patients, I think, at this clinic in totality over the course of years, I believe. I may be wrong about that figure, but I think I'm pretty close. But it didn't take long to add up to big numbers when you do that. That's clear.

But I'm going to let Mr. Reagan take over after lunch. I probably went a little bit over my time than what I intended. But I would just suggest to you to look at the manner in which these cases were addressed by the experts as well, and to what they were doing, what the practices were, what was the interaction, what were the general practices that these -- that Ms. Clemons was doing.

Because this road map that I've tried to show you to get you to get you to, it leads to one place, and it leads to

not guilty. That's where the road map goes. I believe we're good for --

THE COURT: All right. Thank you, Mr. Whitt.

We'll go ahead and take our lunch break, a little later lunch break. Let's stick to an hour and 15 minutes and come back at 2:30. Give you plenty of time for lunch and to stretch.

(Jury out at 1:12 p.m.)

THE COURTROOM DEPUTY: This honorable court stands in recess.

(Recess from 1:13 p.m. to 2:34 p.m.)

THE COURTROOM DEPUTY: All rise.

THE COURT: Ready to keep going?

(Jury in at 2:35 p.m.)

THE COURT: Thank you. Everyone please be seated. You heard from Mr. Whitt right before lunch, and now Mr. Reagan is going to continue with closing argument on behalf of the defendant, Ms. Clemons.

Go ahead, Mr. Reagan.

MR. REAGAN: It's been a little while since y'all have heard from me. I let Jeff do all the heavy lifting with the doctors.

But you know one of the first things I told you was that Cynthia Clemons is not guilty, and that has not changed one bit. I want to talk to you about some things that the

government didn't talk to you about. One of the things that they did not talk to you about, they talked about several of the jury instructions, but I want to talk to you about the most important instruction in this case, the one that is most vital to us as citizens when the government comes and accuses us of committing a criminal act.

We're not guilty simply because they say so, because our constitution, that great document that governs us all, says that unless and until the government can prove us guilty beyond a reasonable doubt, we are not guilty. All you heard from this case was the government's argument this morning, they obviously think that Cynthia Clemons is guilty.

But that opinion of theirs doesn't mean anything. What is important is what comes from the witness stand and what comes from the judge's instructions and what you-all decide, because it's your power.

It's what we have used in our society to protect against government overreach, to protect against innocent people being convicted for something they didn't do, for something the government can't prove they did beyond a reasonable doubt.

And that reasonable doubt instruction tells us that the government must prove every element of the offense charged beyond a reasonable doubt. A doubt -- a reasonable doubt is one, as we talked about in voir dire, a reasonable doubt is one

based on reason and logic. It is a doubt based on reason and common sense. Reasonable doubt may arise from the evidence. It may arise from the lack of evidence or the nature of the evidence.

Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely upon it in making the most important decisions of your lives. And I can assure you today, this is one of the most important decisions, if not one of the most important decisions that you'll ever make in your lifetime, at least it is to Cynthia Clemons.

And what proof is the government asking you to rely on in convicting these providers? They're asking you to rely on in large part the testimony of professional liars, people who lied to make a living. People who were sponsored by Jason Butler, who made a living off of lying, who made a living off coaching other people and telling them thousand lie. Professional liars who came into the clinic and told these lies to get the medications they needed, that they said they needed for pain, but that they really wanted to take and sell out on the street.

That wasn't all lies that they told, as we heard from some of them. Because some of them said, yes, I had legitimate pain. Lisa Elliott, remember Lisa Elliott? She said, "Yeah, I had legitimate pain." She had been injured in a car wreck, I believe.

Cameron Patterson definitely had legitimate pain. This is a man, I think it was Cameron Patterson, forgive me if I'm wrong, but he had two back surgeries that didn't work. I mean -- were those back surgeries not done within legitimate -- for a legitimate medical purpose?

Those back surgeries were done for a legitimate medical purpose to help him with his back pain. How could providing medication to him to assist him with that back pain be not within the legitimate medical purpose and usual scope of professional practice?

Has the government proven that that was not so? I submit to you they haven't. What he did prove was he had legitimate pain.

And another thing is, we talked about the activities of daily living, how these are clinic -- these clinics are not -- they're not pill mills. They're not pain clinics. They're pain management clinics. And the purpose of the medication that these clinics prescribed is to help people who have pain that would interfere with their daily living activities to enable them to function, to go to work, to go to school, to take care of their children or their grandchildren.

And Cameron Patterson is a great example of that. Because we know he had legitimate pain. He had back pain. He had back surgery. He didn't want any more back surgery. He wanted to take pain medication. And taking the pain

medication, he went to school, he held down a full-time job. That's the purpose of these pain medications, is to help people like that, and that was the purpose they were prescribed for, particularly with Cameron Patterson and all the other patients that we've talked about.

I want to talk about one thing about legitimate medical purpose. This is something that Jeff Whitt touched on. This is from Carolyn Hayes' record. I can't tell you what -- y'all don't mind if I step over here a minute, do you?

This is her discharge summary from when she was discharged at the emergency room when she was taken after she passed out at the courthouse. She's taken to the emergency room, they give her Narcan. They know that she's prescribed medication from the clinic, from Lovell Road clinic, I think, maybe Lenoir City. But anyway, they knew she was prescribed medications from these clinics. And did they say, "Oh, no, my gosh, don't -- that's a pill mill, don't take that medication?"

No. They said, "Take meds as prescribed."

Do you think they felt there was a legitimate medical purpose for those drugs, for those medications? They wouldn't have told her to keep on taking them, if they weren't, would they?

Cynthia Clemons is a mother of five. You've seen her mother and father here during the trial. You see her family there today. She worked hard. She had to work hard to get

through nursing school while supporting her family. She had to work hard to get into nurse practitioner school to support her family. When she got out of school, she worked as a -- in an anesthesiology practice for a number of years. She worked at Blount Memorial Hospital for several years. And she worked at a couple of different pain clinics, two or three different pain clinics.

She's making $65 an hour as a 1099 employee. And those of you who are self-employed, as I am, you know that when you're a 1099 employee, when you don't have -- when you don't have your employer paying your taxes, you got to pay them yourself out of what you make.

She had no health insurance. Had to pay her own health insurance and that of her family, too, I would imagine. Didn't get any annual leave or sick leave. She didn't work, she didn't get paid. She wasn't making millions of dollars.

Why would someone do this, commit a criminal act intentionally and knowingly and risk all that, risk being with her family? No one would do that.

And, you know, not only did she work at the -- in the pain management side of the clinic, but she also worked on the primary care side. And you heard her on the tape, Matt Sterns, and we'll get to that in a minute, but you heard her on that tape how she loved primary care a lot more, because it was a lot different and a lot more varied. But she preferred working

at the pain clinics, because the pain clinics, the primary care clinic, because when she worked at the hospital, she had to work weekends, and she wanted to have weekends with her family. Where's the nefarious motive in all that?

The government wants to talk about how she ignored all these things. How can you ignore something that people are actively -- taking active measures to prevent you from finding out about it?

Take one example, one huge example, and this is one that Stephanie Puckett told you about from the stand. Eldin Hardy comes to the clinic to see Cynthia. He sees Cynthia there. He has his arms covered up in bandages. He says he's been in an automobile accident. Cynthia writes in the chart, "Get me these UT medical records from the hospital before I write this prescription."

Stephanie Puckett got them. And don't forget Eldin Hardy is a sponsored patient by the people that are paying Stephanie Puckett. Stephanie Puckett got those records. She looks at the records. They talk about IV drug use.

So I'm sure she took those right in to Cynthia Clemons and said, "Hey, you need to look at these. These may help you make your decision." No, I'm sure she didn't.

What she said she did is, she shredded them to keep Cynthia Clemons from seeing those, to keep Cynthia Clemons from knowing that these bandages are covering up IV drug use.

Cynthia Clemons didn't ignore that. She tried to find out what was going on. And she did, she wrote him a prescription.

But we know from the other medical proof that we've had, you can't just cut somebody off from an opioid prescription. Hippocratic Oath says, first, do no harm. If you cut somebody off, you're doing harm. She didn't do that. She had to take him at his word. If she had seen those records from UT Hospital, that would have made a big difference. Stephanie Puckett knew that. That's why she didn't show those to Cynthia Clemons.

You know, and there are other things that Stephanie Puckett talked about that show to you what kind of provider, what kind of nurse practitioner Cynthia Clemons was. She talked about -- talked about a lady named Jeanine who called her. Remember? Jeanine called Stephanie Puckett. I guess this was after Stephanie had gone to KPC.

But she said that she refused to see Clemons, Jeanine did. She refused to see Cynthia Clemons, because Cynthia Clemons was going to discharge her for having marijuana in her system, and she was also going to make her do pill counts. And Jeanine is the one that called Cynthia Clemons the bitch doctor, because Cynthia didn't just give her what she wanted.

You know, the government talks about -- you know, they talked about, oh, they were just discharging people because they were becoming liabilities. They were becoming --

they were pill seekers. Well, if you imagine what they would be saying if these people who came in with track marks, with bad drug screens, what they would be saying if they hadn't discharged them?

On the one hand, you're a bad provider because you discharged these people when they're not following the rules, when they're not doing what they're supposed to do. And on the other hand, you're a bad doctor if you -- if you don't discharge them. I mean, it doesn't make any sense.

The other phone call that we talked about with Stephanie Puckett was a fellow named Don, and he was -- he called Stephanie Puckett after she had gone to KPC and said, "Hey, you know, this -- you know, Cynthia Clemons is making me do pill counts every two weeks. Can she do that?"

And Stephanie Puckett tells him, "Well, you know, that's not a requirement. They don't have to do that."

But they were doing it. They were doing it to monitor these patients, to monitor them to make sure that -- you know, to try to make sure that they were not simply getting medicine for the sake of their addiction or whatever, that they were getting medication, they were using it in the proper way, and that they were not selling it on the streets.

We talked about another phone call with Stephanie Puckett. This one was from Jason Butler. Jason Butler called and told Stephanie, "Hey, I got one of my patients, I want to

get her in there Wednesday."

And what did Stephanie Puckett tell him? Stephanie Puckett told him, "No, no, don't come in that day. That's Cynthia and Holly Harrell. Don't come in that day. She's a bitch." And so she set them up the next day with Alicia Payne. Didn't want him to see Clemons.

Other things Stephanie Puckett said that providers would -- they did pill counts, and patients would be called in for random pill counts. I would imagine with Stephanie Puckett running the front, that patients who were told to be called in for pill counts may not have got called in every time. Depends on who they were, who sponsored them, who was paying Stephanie.

But another thing that Stephanie Puckett said, and you remember this testimony about this telephone call on the wiretap between Stephanie Puckett and Shannon Hill, and they've gotten wind that there's something going on, that they think that one of the patients may have been wired up to come in and talk to them or something. And they were talking amongst themselves. They're not talking to the police or anybody else. They're talking amongst themselves.

And they say, "Well, we're trying to figure out what's going on, but, you know, the providers didn't do anything wrong. They must be after us." Because, you know, Puckett said the providers weren't in on her scheme. They didn't know what she was doing. They took active measures to

prevent anybody from finding out about that.

So how can you ignore something that people are actively hiding from you? And when we talk about deliberate ignorance is -- you know, deliberate means on purpose. When you do something deliberately, you mean to do it. And so deliberate ignorance doesn't mean they should have known. That's not what it means. What it means is, they knew and they ignored it. There's been absolutely no proof of that.

One of the -- you know, the government wants to talk about this Matt Sterns video. Let's talk about Matt Sterns for a little bit. We talked about Matt Sterns' file where they had the records from the previous clinic that he had brought in. They had an MRI that he said was a real MRI.

They brought in the records from the previous clinic that showed he had -- he told him that he had -- at that clinic, that he had real pain. I don't recall now whether it was back pain, neck pain, whatever. I think it was neck pain.

But anyway, he told them, and it was in his file that was brought to those providers, he told them that he had such a pain problem, he could not pick out a gallon jug of milk without excruciating pain. That's what he told them. That's what he told them.

I'm sure y'all remember Matt Sterns is the undercover officer. That's the one that had the wire. He goes into the clinic, does this undercover visit. He comes in, does his

undercover visit, he does everything possible, everything possible to make himself look like a legitimate pain patient.

He has the MRI. He brings in the records from the previous clinic that talks about excruciating pain. When he comes in to take his urine test, he spikes the urine, spikes the urine so that it would look like on his UDS that he was taking the medication he was prescribed.

If you want to come in and find out if this place isn't on the level, why do you do all that? Because he knew, like these other patients knew. These other scamming patients knew that if he didn't do that, he would not have gotten written a prescription. And if he had not gotten written a prescription, that would have kind of messed up his investigation.

And the other thing that the government wants to talk about on Matt Sterns and his visit is the time he came in and he said, "Oh, yeah, I'm -- I'm kind of a couple weeks late for my appointment because I was out of town on vacation. And while I was gone, I had to -- I ran out of medicine and I had to take a pill from a friend."

And, you know, Cynthia Clemons, she -- at first, it looks like on the video she thought he was talking about marijuana. And she said, "Well, marijuana is not legal down there."

He said, "No, I'm talking about a pill."

She says, "Oh, okay. I'll just write down you were on vacation for two weeks," which is not the perfect thing to do.

THE COURT: Mr. Reagan, I don't want to interrupt. Just try to stay close to the microphone.

MR. REAGAN: I'm sorry, Your Honor. I need a leash.

THE COURT: Okay.

MR. REAGAN: I've got the microphone right here.

THE COURT: Okay. Stay near the podium then.

MR. REAGAN: Yes, sir. When the government showed us that video, okay, they showed it to that point, and they stopped where they wanted to stop.

We objected. We said, "No, no, no. Let's play the rest of it. The jury needs to see all this."

And what you saw, when the rest of it is played, is she's still asking him to get his blood lab reports to make sure that this medicine is not messing with his internal organs, to make sure she's not doing any harm to him by prescribing this.

And he says -- and just to step aside here, you remember all the patients saying, "Well, all we had to do was ask for more medicine and they give it to us"?

What he says is, "Can we up my medication? Can you give me more medication?"

And she says, "No. No. Not until we get your drug

screen back and see what's in your system."

She didn't ask him what he had taken. He may have told her something that was wrong. First of all, he may not have known what he had taken.

But she said "No, you're -- we're going to leave everything like it is right now until we find out what was -- what's in your system, and you bring us these blood reports so we can make sure you're okay."

And, again, you know, the government didn't want to play that whole thing. They wanted to cut it right off in the middle, but you needed to see that. She did not ignore that problem. She did what she needed to do to check it out.

And, you know, the government says they were joking about addiction. He was talking about being addicted to Mountain Dew. They weren't joking about addiction to opioids or anything like that. He was talking about Mountain Dew. They were joking about Mountain Dew.

Lisa Elliott, you know, one of the other things -- excuse me. One of the other things that Lisa Elliott told us was that the providers were not involved in what was going on with Stephanie Puckett and Shannon Hill and Patty Newman. And she told that not only in here to you-all, but she told that to the FBI when she was arrested.

She told the providers that she was a legitimate pain patient. She told the providers she had neck pain. She had an

MRI. She told them it was a real MRI. You know, this pattern is repeated over and over again with just about every one of these patients they put up here.

Lee Jenkins, remember Leo. Leo told us that, yeah, I had a slipped disc, and it caused me a lot of pain, and he was still in a lot of pain. And that's what he told the providers. He did say that he overexaggerated, overexaggerated the pain to get the medicine, because if he told them he wasn't in that much pain, he wouldn't have gotten the medicine, and he knew it.

Scott Willis, do you remember Scott Willis? He's the chicken-fighting man, rooster guy. He said that, you know, yeah, I had -- I told them, hey -- I think he actually said he went in to Stephanie Puckett and said, "Hey, I've got a couple of track marks on here. What can I do about that?" And they came up with the idea, oh, yeah, just tell them it's rooster marks.

When I asked Scott Willis about that on cross, I said, "Well, you know, what -- what were these like?"

And he said, "Well, it was just one or two marks," and it was right there where a rooster would have hit him.

He comes into the clinic, and he's alert, he's oriented. He doesn't look like he's under the influence of anything. And he does fight roosters. You know, everybody over there knew it.

Andrea Osborne, Andrea Osborne comes into the clinic. She tells us that Stephanie Puckett coached her on what to say to the providers to get her medication. She also said that Cynthia Clemons was the only provider to ever ask her about track marks.

And she also told Sylvia [sic] Puckett, and this is what Andrea Osborne testified to from the stand, told Stephanie Puckett she didn't want to see Clemons again because she was concerned she wouldn't get her meds if she saw Clemons.

If Cynthia Clemons is ignoring this stuff, why is Andrea Osborne worried that if she sees Clemons, she's not going to get her medication? Why is Jeanine calling Sylvia Puckett and complaining about being discharged for marijuana and having to do pill counts? Why is Don calling and saying Cynthia Clemons is going to make me do pill counts every two weeks?

And the government talks about these providers ignoring routine monitoring. That's routine monitoring. Monthly visits are routine monitoring. They want to talk about these being high-risk patients, yet they complain about them coming in every month, the government does. That's why they come in every month, so you can monitor, so you can see what's happening, so you can see what's going on.

You know, one of the -- one of the red flags that they talked about, what the government wanted to talk about at

the start of this case was how trashy these people look coming into the clinic. Look like they shop at Walmart. They drive bad cars. I think one of the security guards described them as street urban cars. You know, what does he mean by that?

But then Shannon Hill gets on the stand, and we talked to her, and Shannon Hill says, "Well, yeah, I used to work in a dialysis clinic, and we had the same type of patients there." And it's the government trying to use what's there to try to make you-all think that that's bad. And it's not.

What else did Shannon Hill tell us about Jason Butler? That Jason Butler would come in with patient -- Butler's sponsored patients would come in, a couple of them would come in at the same time, and they would have the same MRI, except, you know, the names were changed. And Stephanie Puckett didn't go tell the providers, "Hey, these are fake MRIs."

What Stephanie Puckett and Shannon Hill did was, "No. Just don't put both those patients in with the same provider. Split them apart, so the providers won't know." Another one of those active measures that they took.

Again, Shannon Hill confirmed what Stephanie Puckett said, the providers didn't know what was going on, because they kept it from them. They kept it from them. Active measures to conceal what was going on, to keep these providers from knowing what they needed to know to make the medical decisions that

they wanted to make.

They wanted to talk about -- about how -- one of the red flags is a dirty clinic. It's a not clean. It's just -- they're ratty looking. Crystal Parks -- or Crystal Morgan, I think her name is now, came up and testified. She said, yes, when she went in there, the office was cleaned, it was well organized. Government's own witness comes in and says it's clean.

And one of the other things a lot of the patients talked about was how packed these waiting rooms always were. They talked about that until we got the still photos from Matt Sterns' visits, and showed them to you, and there's maybe two, three, maybe four people in there. They're certainly not packed. And that's photographic proof of that fact.

Another thing is, the government talks about -- well, they didn't -- you know, they didn't make referrals to neurosurgeons or to orthopedists. Okay? On the one hand, the government wonders how somebody can pay $300 a visit here, and they wonder why they don't get referred to -- people without insurance, why they don't get referred to neurosurgeons who's neurosurgery probably starts at $12,000.

And who's got $12,000 laying around to pay a neurosurgeon? You know, you may get surgery there, and you may end up like Cam Patterson and it doesn't work, first of all. But they were making those referrals. And the person that told

us that was Brandon Ledford.

Brandon Ledford said, going to a neurosurgeon would be impossible for me because of the expense. There were a lot of other patients in his same boat. You know, Brandon Ledford lets us know that referrals were made. It's just the patients couldn't afford them. There may have been patients like Cam Patterson who chose not to have another surgery and chose to control his pain with pain medication.

Another thing they talk about, one of the red flags is, no medical supplies, and there's no medical supplies in these clinics. And yet when Jessica Watson gets up on the stand, she talks about Cynthia Clemons swabs her arm with an alcohol swab. I guess that alcohol swab came from the medical supplies that weren't there.

Now, I want to talk about Heather Alred. From the perspective of Cynthia Clemons, Cynthia is in the clinic one day. Heather Alred comes in, and Heather Alred has track marks, track marks that Cynthia Clemons discharges people for. But she didn't discharge -- didn't discharge Heather Alred because Heather Alred tells her, "Look, here's what happened. I got assaulted. I got raped. This guy jabbed me with needles."

And the government wants to talk about Cynthia Clemons not caring for Heather Alred or what -- you know, what this story she told. And I don't know whether Heather Alred

was raped or not. Nobody was ever charged for it.

We'll talk about Leslie Steelman. He was never charged for it, never even been convicted for it, never even been charged. The government wants to call him a rapist. I guess they've already convicted him without a trial.

But going back to Heather Alred. She's going to the clinic. She knows she's got these track marks. She knows she's got to come up with something to keep from being discharged. And she tells them this story about her being raped by Leslie Steelman.

Cynthia Clemons could have discharged her right then and there, written her a taper dose, said, "No. Track marks, go."

She didn't do that. She said, "Well, let's -- you know, let me look at this."

She brings in -- she gives the note to the medical director, Dr. Larson, she calls him in, says, "Hey, this is what this lady is saying." You saw the note that she gave to him. "What should I do?"

And Dr. Larson says, "Let's get the police reports. Let's get the report from the sexual assault nurse."

The government says, "Oh, why didn't she refer her to a sexual assault nurse?" She had already been to a sexual assault nurse. Why would you refer her to see another one?

And they get the police records, and, they're -- you

know, they're not even going out a month with her. They're saying, "Let's bring you back in a, week and let's see what these records say." And they have to do it another week. They're doing it a week at a time. And they're giving her the benefit of the doubt. Cynthia Clemons is caring about what happens to her, because Cynthia is not sure what's going on with her.

And then we get the records and we go over the records, and the story in those police records isn't quite what she told Cynthia. But she still doesn't get discharged. She comes back another week later and has a dirty drug screen, which, you know, could have been enough again to discharge her right there on the spot.

But because of what's going on with her, they don't do that. They ask her to come back another week, let's do another drug screen and see if maybe that was a -- you know, a mistake in the lab or whatever. Goes back the next week, got drugs again that shouldn't be there, and even at a higher level. Then and only then does she get discharged.

If these were uncaring, not compassionate people, she would have been discharged the minute she came in there with those track marks. We know that from the proof that's come in about the discharges and the discharge summaries and all that. People were discharged for track marks all the time.

And then the government talks about -- one thing I

want to talk about, Heather Alred, is this, she goes to the ER. Right? She tells them what's happened to her. That hospital knows that she was being prescribed oxycodone and oxymorphone from the clinic. They knew that, and they discharged her. They gave her additional oxycodone.

And they also told her to -- here's the oxycodone they prescribed her, the additional oxycodone, and then, you know, here that they've said, "Yeah, you're taking oxycodone and oxymorphone. Continue these medications as you were prior to today's visit."

They knew these pill -- this medicine was being prescribed to her. They knew the clinic it was coming from, because they had the pharmacy printout, and that's in the file. You can look at it.

And did they say, "Oh, my God, no, that's a pill mill. You can't take those pills"?

No. They said, "Keep taking those."

Do you think they thought those were for a legitimate medical purpose? They didn't say, "Stop taking those." They said, "Keep taking them. Here, we'll give you a little more oxycodone to help you with this thing you're going through right now."

THE COURTROOM DEPUTY: Five minutes.

MR. REAGAN: I'm sorry. I've got five minutes. Hope it's five minutes, not five seconds.

And I'll just close -- one thing I want to close is with this, and this is from -- I apologize to you for reading to you, but I don't have it memorized. This article is talking about the -- this is a 2018 article when they're talking about lowering the MED levels and all that, CDC guidelines.

"These requirements have caused some physicians to stop treating pain with opioids completely. There may also be an adverse effect on chronic pain patients who will have to deal with debilitating pain without the one measure that has proven effective for them, pain medication.

"One study of 3,108 pain patients indicates that 84 percent report more pain and a decreased quality of life as result of the CDC guidelines and 42 percent have considered suicide.

"We also have to take into account the unintended consequences of increased mortality from illicit opioids, such as heroin and illicit fentanyl analogs.

"While we have seen dramatic decreases in opioid prescribing patterns, we have seen an increase in overdose deaths as people turn to street drugs.

"As we navigate these difficult times, it is important that we always keep our patients' best interest in the forefront of our decisions. While it is imperative that we change our mindset on when and how we prescribe opioids, we must also remember that there are patients out there that do

suffer from chronic pain and deserve to be treated with the same compassion as anyone else."

The author of that article Dr. Rett Blake, the government's expert.

And what did Cindy Clemons say in her meeting with her appointment with Sterns when they talk -- when she talks about the -- you know, there are new guidelines coming out where they have to reduce them down, she said, "This is going to hurt a lot of people." Rett Blake says the same thing.

All these things I've been talking to you about, you know, discrepancies in the proof, you know, the things that these people -- patients are saying that Cynthia Clemons did, that they didn't like because she wasn't giving them the medicine they wanted, all those fall within the realm of reasonable doubt.

If you think that Cynthia Clemons might have not -- if you think the government has proven that Cynthia Clemons might have prescribed these drugs without a legitimate medical purpose, they're outside the scope of professional practice, you think that might be true, that's reasonable doubt. If you think it's even likely that it's true, that's reasonable doubt. And reasonable doubt is a very high standard, ladies and gentlemen, all the way from he was proven not guilty and defendant's don't have a burden of proof.

We don't have to prove ourselves not guilty. It's

the government's burden, because as we talked about, that's what the constitution provides. That's the law of the land. That's what the instructions the judge will give you. It goes all the way up to guilt is highly likely. Even that doesn't satisfy reasonable doubt.

So, again, we don't guess people into the penitentiary. We don't assume people into the penitentiary. We don't send people to the penitentiary because they might be guilty. It's the government's burden, ladies and gentlemen.

What you have seen from the proof is that Cynthia Clemons was a caring and compassionate provider who did what she thought she should do in these cases.

And, you know, the deliberate ignorance the government was talking about, you know, the judge will tell you she may have been careless sometimes. She may have been negligent sometimes. But that is not, not deliberate ignorance, and that does not make her guilty beyond a reasonable doubt. The government has to prove it beyond a reasonable doubt. They haven't done so.

Jeff Whitt and I have been here fighting for Cynthia Clemons for three months now. But now my part -- our part is now over. It's up to you-all now. You are the ones who must decide. You are the ones who must say no, this case has not been proved beyond a reasonable doubt.

If you feel that, if you don't feel it's been proven

beyond a reasonable doubt, the judge will tell you under your oath, you must find -- return a verdict of not guilty.

Let Cynthia Clemons go home with her family, because Cynthia Clemons is not guilty.

THE COURT: All right. Thank you, Mr. Reagan and Mr. Whitt, for closing argument on behalf of Defendant Clemons.

Who's going next? Are you ready to go? All right. We'll go ahead. Next is going to be closing arguments on behalf of the Defendant Ms. Hofstetter. And Ms. Cravens will go first on Ms. Hofstetter's behalf.

MS. CRAVENS: Ladies and gentlemen, a few years ago, I read a book called "The Signal and the Noise." A friend gave it to me because I was trying to make a big decision. And the idea behind the book -- and it had lots of math, which you know I skimmed over.

Yeah, the big picture behind the book was that when you're trying to make a big decision, you have to separate what is signal from what is noise. And signal is fact, the reliable things, the things that make sense. And noise are the -- is the stuff that distracts you, the flashing lights, the extras, the things you get caught up in but don't really impact what is the fact, the basis on which you should make your decision.

So I was thinking about that, and speaking with Mr. Burks, we're going to split our time here today, about talking to you. And thinking about this case that we've all

lived for so long now.

And in applying that concept to my thoughts this week, ladies and gentlemen, the government wants you to convict Sylvia Hofstetter on the noise. They want you to convict her because of her personality. She's not always likable. Little bit strong-willed. They want you to convict her because she made a lot of money and she liked to gamble. They want you to convict her maybe because opiates, we know in 2020, are bad.

That's all noise, all noise. The signal in this case are going to be what Judge Varlan tells you, probably tomorrow when he gives you those jury instructions. Those are the signals you have to seek out. Does it -- has what the government's shown you in each and every element answer those instructions?

It's why Mr. Reagan is pointing out the most important, reasonable doubt. It's not only the most important instruction, it's the most important part of your job. You are here to seek reasonable doubt. Because if you find it in the government's proof, you don't have an option under the law but to return a not-guilty verdict. It's as simple as that.

So I want to talk to you a little bit about what I call noise that we've seen in this case. So you know after three months of trial that it's been almost five years here, in about six weeks, since the federal government descended on these clinics and arrested Ms. Hofstetter and some others, five

years.

You know that there was at least one year, maybe two before that, that the government was investigating these clinics. You know that, because you've met Matt Sterns. You know that because you met the gentleman from Florida, the agent whose name escapes me. He was going to the zoo.

You know that investigation happened. You know there were undercover agents going in because you saw people like Matt Sterns with their key chain camera or cell phone camera or whatever was -- contained the camera in the exam room with Ms. Clemons. You saw the still photographs that Mr. Reagan referenced of the packed waiting rooms for Mr. Sterns.

This idea, their red flags, the crowded waiting rooms, noise. If they could have proved it, they would have. You would have seen it on those videos. That's not what you saw. They didn't bring you the key chain cam of the packed, crowded waiting rooms. They brought you a parade of admitted liars, of admitted scammers, professional cons.

Not the signal, they brought you the noise.

Another red flag. We talked about -- the government has made a big deal out of parking lots, out-of-state tags and parking lots. Such a big deal that I asked Dr. Blake, "Do you spend a lot of time in your parking lot?" I was really shocked he said yes. But they made a big deal out of that, a red flag for an illegal pill operation.

They've shown you one picture from all their undercover surveillance of one tag from Jefferson County. In seven years of investigation, one Jeff County tag, right up the road, and a parade of admitted liars and cons.

Security, armed security, we've heard a lot about security guards too. More noise. The government talks about how there was security at this facility. It was necessary to protect the patients. Ms. Hofstetter did that. The government's witness told you they did that.

Dianna Berdal, the landlord, came right in here, sat on that stand, and told you they asked for a security guard to be hired because the parking lot was messy. Cigarettes were burning in mulch. The ashtray was on fire. Somebody needed to keep it clean, keep people from littering, whether it was Bradford behind, the hair salon below, or these clinics that were a result, causing the litter.

It wasn't the clinics that hired the armed security guard. That's not indicative of some sort of need to control their patient population or to protect themselves. It's because the landlord wanted them to keep the parking lot clean. They did what they were asked, compliant.

This morning, Ms. Pearson, she mentioned paper signage. And we've talked a lot about the names of these clinics, as if they're trying to hide what they do there, as if they chose those names to deceive. That's how they talk about

it. That's noise.

And we know that again because the landlord took the stand. You remember seeing the lease? The lease that prohibited the use of the word "pain" and allowed all signs had to be approved by the landlord?

Ms. Pearson referenced paper signage. But you've seen the picture from Gallaher View. You've seen the picture from Lovell Road with a sign right there on the door. It's not illegal to have an inefficient sign. It's just noise.

And then perhaps one of my favorite examples, Lori Crabtree. We met Lori Crabtree, and you -- you can go back and look at it, Exhibit 654. You'll be able to look at anything you want to back there.

They were talking to Lori Crabtree about how Ms. Hofstetter dressed and her love for fine jewelry. And they put up a picture of Sylvia Hofstetter, and it has that big, thick, gold chain hanging down to almost her waist and a big thick gold ring across her entire fist. They made a big deal out of her jewelry.

"Does she wear jewelry like that?"

"Yeah."

Nobody believed that. That was a Halloween costume. How do we know that? Because the date was on the photo. They're trying to make something exist where it does not, and trying to convince you that that's true, that it's signal when

it's just noise.

Another signal, and this -- I'm not going to repeat everything. Mr. Whitt particularly, throughout the course of this trial, has talked to you about legitimate medical purpose and the usual course of professional practice. That's a signal. The judge is going to define it for you. He is going to tell you what that means.

And then you have to decide if they have proven beyond a reasonable doubt, the government has proven beyond a reasonable doubt that those prescriptions were not for a legitimate medical purpose and in the usual course of professional practice.

Ms. Hofstetter, she has no medical background, which you know. She wasn't a site manager, though they insist on calling her that. She was a corporate manager, a corporate administrator, which you've heard.

She had regional and site managers beneath her, people like Maria Vera, Stephanie Puckett, Lori Crabtree, those were site managers. Those were people in the clinics every day, and she relied on them. She relied on her medical directors. She wasn't there every day. The witnesses told you that.

Staff, like Crystal Parks Morgan, told you that. And more importantly, perhaps, I'll say signal, a little less noise, Crystal Parks Morgan told you that she never saw

anything illegal when she worked at these clinics. When she was asked if she had, what would she have done? Her response was, "I would have gone and told Sylvia, and I'd have quit."

So it defies logic, that if Sylvia was someone that Crystal Parks Morgan believed wouldn't do anything about an illegal act occurring in this clinic, why would she have said she would have told her?

If Dr. Blumenthal, Dr. Valley, Dr. Larson knew they were working with Sylvia to run an illegal pill clinic, a pain mill, there's some more noise, why would they send e-mails suggesting improvements? Why would they make them? Why would Debra Kimber be brought in to do compliance? Now, truthfully, Debra Kimber did say the compliance wasn't important to Sylvia. Fair statement. She made that.

I don't know if compliance was important, but it seems to me that if you were trying to make sure you had all of your window dressing in order, you would have wanted -- compliance would have been important, because those notebooks make it look more legitimate. Less -- it's window dressing.

So we've made a big deal out of that. And Mr. Reagan has covered a lot of those issues regarding that window dressing. But I want to suggest that there's a simpler solution to this question. Was it window dressing or legitimacy?

Well, the simplest answer is often the truest one.

It wasn't appearance. It wasn't window dressing. It was just legitimate. It was just the business operating. Boxes of files you saw through pictures of through Ms. Sherrod, through the agents, all of these documents that you've seen during the course of this trial, regular business records. Chart after chart was kept in the same order.

Now, we know there was something illegal happening at those clinics. Can't deny Stephanie Puckett and Shannon Hill definitely were running an illegal operation, and they've admitted it. You've heard the recordings of how hard they worked to hide it for Sylvia and how mad they knew she would be if she found out something illegal was happening in that clinic.

And they told you she didn't know anything about it. Patients told you she didn't know anything about it. So it's the simplest common sense answer is, if Sylvia Hofstetter were running the operation the government wants you to convict her of running, patients wouldn't have had to do that.

Shannon and Stephanie wouldn't have had to do that. In fact, they would have been employee of the month. Sylvia -- there's another signal about how Sylvia would have reacted to that. She did. When she found out something was wrong, you heard Lori talking about there were papers in the floor. She went in and there were papers in the floor. We started these audits. And you've seen a lot of those audit sheets as we've

gone through some of these charts.

And Sylvia was mad. Sylvia wasn't mad because she was losing patients. Sylvia was mad because she had just figured out something wasn't right. She didn't know what, but she was bound and determined, that's true, she's bound and determined to find out. Consistent with her personality.

And so she brought in Lori Crabtree and some others that Lori talked about to figure out what had been going on, why these papers weren't where they were supposed to be. How bad was it? How deep did it go? What had been happening?

And so they started this audit. The audit was ongoing at the time of the raids. The audit that produced sheets, little checklists that you've seen. They look kind of like this.

See if I can maneuver this without causing some kind of -- Jessica Watson. You know Jessica. You met her, been through her file a lot. This is just an example of one of the many kinds of audit sheets that you will have seen.

And that was in an effort to figure out what had been happening. You can't fix a problem you don't know about. Dr. Blumenthal was giving her information throughout the course of the clinics, Dr. Larson, Dr. Valley, they're making changes, updating protocols. Same thing with this. Just figured out there's a problem. Is it a paperwork problem? Is it just file clerk not doing her job?

That's when they start looking. And then they start finding these sorts of things. She never really gets to the bottom of it before the federal government slaps handcuffs on her. But she sure tried. She's doing audits like this, trying to uncover information. Trying to find the signal in all the noise.

Jessica Watson, I'm not going to talk anymore -- well, I'm not going to make that promise. I'm going to try not to talk anymore about Ms. Puckett and Ms. Hill, because I think Mr. Burks has some things to add.

But I do want to mention one sort of example of that scam they sat in here and told you they were running with patients from Mr. Butler and Mr. Jenkins. This was particularly telling to me, because it really jumped out at me just a few weeks ago of how good at it they were, how convincing these patients and those scammers were in this clinic.

And it had to do with Jessica Watson. You'll remember, I'm sure, that file being reviewed with Dr. Blake, sort of visit by visit, and going through all -- every one of those drug screens, checking to see what was there, what the providers should have seen. Spent a long time on it.

And there was one that the government spent a long time on that caught my eye. And this is from Ms. Watson's chart, which you know is an exhibit. This one caught my eye,

because it proved how good they were. The United States government stood in this courtroom, pointed to this document, had their expert testify that this was Jessica Watson's drug screen.

That's not the name on that document. That's Rachel Watson, May 30th. That's her May 30th visit. Their scam was so good at fooling people, that it fooled them right here into this trial, all these years later. Can't rely on that kind of noise.

And we know that that was Stephanie and Shannon's little scam, because there's also a second copy of that same drug screen over in Rachel Watson's file where it belonged to be seen by a different provider. And we know that as part of their scam, because that drug screen which you can find elsewhere, would have been positive for cocaine and they wouldn't have gotten their pills. That would have upset the apple cart. That wasn't going to happen. So that's -- you know, maybe that's signal and noise.

Here's another signal about Sylvia Hofstetter and what she knew. Brandon Ledford, who Mr. Reagan mentioned, he stood there and we were talking to him about what happened after things changed in late '14 after Hill and Puckett left. He said there's a big change, big change. Well, I reckon so.

Sylvia is now trying to figure out what's wrong. She's on-site a little more often. She's got the audit going,

trying to figure it out. Gerritt Orrick. I loved Gerritt. Described all his cars by his rims. Do you remember that guy? Interesting fellow.

But he told us, he gave us some signal. When that black Lexus pulled up, everybody got right. Why? Why did everybody get right? Boss lady, boss lady was coming. And they had to get right, because they knew if they weren't and she saw it, the jig was up. Because Sylvia Hofstetter was running a pain management clinic.

If she were running an illegal pill mill, she wouldn't have cared what Gerritt Orrick or anybody else was doing. They wouldn't have been afraid to be seen by her. Puckett and Hill wouldn't have been afraid to be caught by her.

That's the signal, ladies and gentlemen. That's the signal. You've heard it from the witnesses. So think about what they said. No one of these patients or these providers can say otherwise.

They can complain about Sylvia's personality. Big personality, we know. But that's the extent of it.

And so I want you to think, and this is the same instruction Mr. Reagan referenced, because your job here is not to do anything except put the government to its burden and to take a look at reasonable doubt.

With each -- with regard to each of these elements, will you rest easy trusting that kind of information? Five

years of investigation, five years since these clinics were closed down, and all these documents were in the exclusive possession of the United States, five years in which Agent Nocera told you they didn't bother to look at all the documents. They didn't read them all.

They gave you few e-mails, not a lot. Some charts, not the boxes of PMPs, audit sheets, and UDS that were otherwise filed. Is that the kind of information that you can rest easy, rest your decision easily that there's no reasonable doubt in this case?

All the opinion witnesses, Dr. Blake, Dr. McCoy, Dr. Browder, can't remember specifically Mr. Carter -- or Dr. Carter. Said, you know, Dr. Blake, he said -- he sat there and he said Dr. Browder, he's a real doctor, real doctor. He said reasonable providers can disagree. Mr. McCoy said that. Dr. Browder said that, something to the effect of reasonable providers can disagree, period, end of story. If reasonable providers can disagree, that's a truckload of reasonable doubt.

So I'm going to give Mr. Burks his time. But before I do, I want to tell you just a little bit -- take a little opportunity to tell you about what I know about Sylvia. Because you've heard, you know, she's a bitch, didn't like her. And maybe that's true. Maybe it's not.

She's a hard personality, for sure. She reminds me a lot of me. Some people think I come across one way, and some

people think I come across another one. Sometimes I think it's a compliment, and sometimes I'm a little offended.

Sylvia is a lot like that. She's strong-willed. You know that she came up here from her -- from Miami. Her family emigrated from Cuba. You got to sit here for months, and in and out, you've seen her mother, flying in and out, as she was able to do, to be here with her daughter. You've seen sisters. You've seen -- they look very much alike, but there are two. And they have flown in and out to be here with Sylvia as they can. You've seen her aunt on occasions, her brother. The people who can be here for her have been here.

And at heart of hearts, that's really who Sylvia Hofstetter is. She's really this person. They're going to point out the pool table, her fancy house. I'm going to point out a photo wall. It's blown up from that last picture you saw of her house. This is her family, her mom, aunt, cousins, friends, daughter, and her grandson.

Grandson is the light of her life. She hasn't spent a lot of time with him, as you might imagine, over the last five years, but that's her soft spot. It's her grandson.

So she's not this monster. She's not this serial gambler who's gambled away, according to the government, way more money than these clinics ever made. Not her at all.

She came to Knoxville on a temp job for her neighbor to be closer to her boyfriend, Mr. Davis, who had moved to

Atlanta, thinking she'd be here a little while, get these businesses they wanted to start up and running and go back to her family.

And, granted, it gave her an opportunity, a business opportunity she never thought she'd have. They pulled her right in. Kept her busy, kept her running, kept her unable to see anything but a legitimate clinic, a legitimate business. That's why she came here. Not the I-75 pipeline. She came here to build a life.

For all that's been said about her personality, I'm going to say this, thank goodness she has a strong personality. Someone made of weaker stuff couldn't have survived five years of waiting for you, of waiting for the day that a jury would finally hear the actual evidence, not the perception of it, not the characterization of it, not the stylized, mediaized version of it, but the actual evidence, and be given the actual instructions from a judge on which they decide her fate. A weaker person couldn't have endured. Strong-willed one, she is.

And that's why you're here. Because she trusts you. She trusts you to make the decision the way you would make it for yourself, the most important decisions of your life. Have they done enough? Have they been careful enough to prove a criminal case on any of the counts against Sylvia Hofstetter?

Frankly, I submit, they haven't. They've given you

the noise, but not the signal.

I thank you very much for your dedication. I know how hard it is to have listened to all of us for three months.

So on behalf of Ms. Hofstetter, I'm going to turn it over to Mr. Burks, but I do thank you.

THE COURT: Thank you, Ms. Cravens.

Before we hear from Mr. Burks, why don't we take a break, take our afternoon break at this time.

(Jury out at 3:56 p.m.)

THE COURT: We'll take a break, let's say till about ten after four. Mr. Burks, Ms. Cravens left you plenty of time. One of our jurors has a dentist appointment. We need to be out the door no later than 5:30. So why don't we go to about -- depending on how long -- I think if we went to five or 5:15, you'd still have plenty of time, so unless you have some reservations, I think we'll go ahead and get started with you. If you don't finish by around them, you can finish up in the morning. All right.

THE COURTROOM DEPUTY: This honorable court stands in recess.

(Recess from 3:57 p.m. to 4:16 p.m.)

THE COURTROOM DEPUTY: This honorable court is again in session.

THE COURT: Everybody ready?

(Jury in at 4:16 p.m.)

THE COURT: All right. Thank you. Everyone please be seated. Mr. Burks will continue with closing argument on behalf of the defendant, Ms. Hofstetter.

MR. BURKS: Thank you, Your Honor.

Ladies and gentlemen, I have to confess that this makes me awfully nervous to stand before you knowing that you-all will be sitting in judgment of my client, Sylvia Hofstetter. And that I do want to thank each and everyone of you.

I don't know that I've ever been part of a trial that has demanded so much from citizens doing their duty. And the fact that you-all have been willing to take on this duty is just -- it's awed me. I mean, I'm blown away, because I've watched you, and you-all have paid great attention to this case. And I can't thank you enough, and that's regardless of the outcome of this case. I can't thank you enough for what you-all have done.

You, as the jury, make up the bedrock of our judicial system. I say that because while we put on proof and cross-examine, the judge gives you the charge, you-all determine what justice is.

Every time that a jury sits before a citizen or citizens accused, they set a standard of justice, and you-all will set a standard of justice in this case. And I can't be more proud of watching you listen and take note to try to

figure out what the truth is. I really believe that you-all have sought truth in this case, and that's all we could ever ask.

So on behalf of Sylvia, Loretta Cravens and myself, I personally want to thank you for that.

And this case is, you know, so voluminous, and we had over a terabyte worth of discovery and information on the front end, and it's gone beyond that. So I know that y'all have heard a lot. I don't expect to be able to tell you anything that you hadn't already heard. So I'm going to try to be concise, but there's some things that I think are important to tell you from our viewpoint. First thing I'm going to do is get my reading glasses.

The judge is going to tell you what the law is, and certainly we've all touched on it. And I'm not going to go through a list of all the law and what the Court will charge you with, but I simply would say that the bedrock of this case has to do with the issue of these conspiracy cases.

And a conspiracy case basically says that the government must prove beyond a reasonable doubt that Sylvia Hofstetter, Courtney Newman, Ms. Womack, Holli Womack, and Cynthia Clemons all agreed to enter into these crimes that they're alleged to have committed. That's really the beginning of what a conspiracy is, and the Court will tell you how you determine that.

But I think the question you have is, did they really do that? Did they ever actually say, "I want to be a part of a criminal enterprise or a pill mill or money laundering"? Was that my intent to be a part of that? That's really the question.

Did they prove that to your satisfaction beyond a reasonable doubt? And that's -- that's where you will begin, I suspect, to look at these facts and these cases to make that determination and to determine whether or not these individuals did enter into these conspiracies with the intent to be a part of some criminal act. And it really sort of boils down to that.

As jurors, when you raised your hands 36 trial days ago and months ago, y'all took an oath, and part of that oath was that you would try these cases to the best of your ability, and you would not do it with any prejudice or bias or sympathy that you may feel towards one side or the other.

That seems to be just sort of a saying. But in this case, it's really important, because as we all know, the elephant in the room is the opiate crisis that you hear about, you read about, you talk about. And what's important in this case is that under your oath, you shall not have -- you should not have any bias towards a crime that's been committed because you're to determine whether or not the defendants are guilty of a crime, not this opiate crisis.

That would -- if that sways you, if that influences you in any form or fashion, then that is the bias that the Court, I think, will charge you that you should not have.

So the question is not about what your personal feelings are about the opiate crisis, about all of the problems that that causes. Your duty under your oath is to determine whether or not Sylvia Hofstetter is guilty of these charges. Has the government proved beyond a reasonable doubt? That's really what it's about.

So as we delve into that, you've heard other charges. I just want to touch on -- on two more, that I think are critically important in this case. You're going to hear the Court charge you on the credibility of witnesses. And the Court, I believe, will tell you that as jurors, you're to decide the credibility and the believability of each witness. This is your job. It's not our job. It's not His Honor's job. It's your job to determine the credibility of these witnesses. And you are to give the weight as you see fit.

And then you'll hear him tell you some things for you to consider. And a couple of those that I think, if he tells you this, I anticipate he will, that you should ask yourself if the witness had any relationship to the government or the defendant or anything to gain or lose from the case that might influence the witness' testimony. That's going to be a charge that you'll have in this case.

You are also to consider whether the witness had any bias or prejudice or any reason for testifying that might cause the witness to lie or to slant the testimony in favor of one side or the other.

Something that -- well, ask yourselves if the witness testified inconsistently while on the witness stand or if the witness said or did something or failed to say or do something at any of the other times that is inconsistent with what the witness said while testifying. It can make the witness unbelievable. But that's up to you to determine. Also consider other things that you think shed some light on the witness' believability.

Now, those aren't all of the instructions, but those are some I point out to you, because we're going to talk about some witnesses and talk about how you should consider -- I'm going to suggest you should consider their testimony.

Also, again, the issues of -- let's say the money laundering, the money laundering is if Mrs. Hofstetter was -- knew that these moneys were part of some ill-gotten gain, then if she uses them and sends them through a corporation or, as they say, conceals, if you find that, that they've proven that beyond a reasonable doubt, that would be a money-laundering situation.

You heard Mr. Still up there several months -- weeks ago or a month ago saying, "Well, if you pass it through a

business, then that's concealing it." But we know that lots of people that have companies that will put money in one company to pay expenses and to send others. You have to determine whether they've proven to you beyond a reasonable doubt if Mrs. Hofstetter has concealed any moneys in that light.

Also, you heard discussions about whether or not Mrs. Hofstetter, Ms. Newman, Ms. Clemons aided and abetted one another and did knowingly and intentionally open and use and maintain a business for this illegal drug trafficking, as the government has labeled it.

Again, did they know that these businesses were being used in that fashion? We know that they didn't know what Mrs. Puckett and Mrs. Hill were doing.

The question to you is, were they doing it because they thought they were operating a pill mill or a pain clinic?

If you find that there is reasonable doubt as to whether they knew that this was, as the government calls it, a pill mill, we know the definition is different, but an illegal pain clinic, if they haven't proven that beyond a reasonable doubt, then they have not met their burden. So that's another charge.

And the last one I want to talk about is the deliberate ignorance. I didn't have it, but I think I can talk about it without it.

The Court will charge you on deliberate ignorance.

That is that you have to purposely, deliberately turn away from something you know that's going on. You close your eyes. Sometimes we call it blind -- the blind eye or you turn away from it. But it's not that you just know about it, but you actually take an affirmative action by deliberately turning away from it.

Now, in the proof of this case, I think just the opposite is what's been proven. Any time that Mrs. Hofstetter was alerted to some problem, she addressed it. Dr. Blumenthal, he has some concerns about the -- the clinic, as it was getting started, he was the doctor in charge. And they showed you some e-mails where he was concerned about those issues and wanted Mrs. Hofstetter to take some action. There were other e-mails that when we asked about them, they said, "Well, we haven't read those. We don't know about those."

But the one e-mail that we did look at, if I can find it. I apologize. I may have to come back to that. It's the e-mail from Blumenthal. I've got it. I'm sorry. Here it is.

This is Exhibit 580. It's been introduced. And you remember all the e-mails they had where he was panicky and he was -- he was really concerned about things that were going on and nervous and all that? They showed you those e-mails, but they didn't show you this e-mail, and we brought it up.

This is Exhibit 580 from Dr. Blumenthal. I'm going to step over here so I can read it too. This is in May the

15th, 2011.

"Dear Sylvia, permit me to thank you for running an outstanding skillful group meeting on Thursday.

"The team needed it, and I needed it personally.

"Learning appropriate aspects of the business and business management helps me 'stay out of the middle' of areas where I truly do not want to go.

"You are the best person to teach me those aspects.

"I think we should both benefit from having some private discussions to discuss what's working well, what isn't working well, and how to achieve the best outcomes.

"Also, I have had a lot on my plate just now, especially some very unfortunate divorce issues, challenging parenting issues, and the fact that I absolutely must prepare for and pass my Family Practice Boards again in November (a major studying and time-management task!)

"At times, I feel overwhelmed, and I apologize for 'blowing my cork.'

"I want to see this business thrive, and you and I are the central figures in making it do so.

"Let's do it!

"Thanks, Mark."

I show you that as an exhibit that we've looked at. It's different than what we saw that the government would present to you. I submit, just like Ms. Cravens said, those

are noises. What that e-mail says is different. And he apologized for how he had been feeling. He had been going through some personal things, and he was scared.

So did she turn her blind eye when she got his complaints, his information both before and after, or did she address those issues? She did.

Again, and we'll go through this some more, but I'm going to stay on this just for a little bit. Fast-forward now to 2014 when it hits the fan. And what hit the fan was when Mrs. Hofstetter comes back and finds the files in disarray, everything is in disarray. She confronts. She doesn't hide. She doesn't just ignore it. She confronts the problem. And what she confronts is enough to where Puckett decides it's time for her to leave because it's about to hit the fan again. They're going to find something out. That's Puckett's reason for leaving.

And what do we find later is that when Mrs. Hofstetter has some idea that there was some problems, did she turn away deliberately and ignore the problems? Or did she go out and say, "Lori Crabtree Gaston and the rest of you, let's pull these files. Let's look and see if there are things that are not in there. Let's look and see if these files are where they should be."

And what did we find out? Lo and behold, there were audits that were done, and those audits showed that something

was amiss with that lab, the UDS's. Was that turning a blind eye? Was that deliberately ignoring a potential problem when it was brought to her attention that there was something that she didn't know.

I know the government made some comment with Agent Nocera, did anybody go over the law? Well, they didn't know what they had. They didn't know what they had really until they got the wiretaps after this -- this clinic was closed and they got that evidence. Then they saw what in the world Puckett and Hill were up at -- up to.

One other example, pain cream. Ms. Hofstetter found out that Maria Vera was going behind her back and trying to do a pain cream scam. And the scam is that they would send the cream to customers who didn't ask for it, and then they would -- they would send it to customers that had insurance, and then they would bill the insurance companies, and then they were -- then Maria was getting the money and getting kickbacks from the pain cream company.

And, in fact, you heard that what they did is, they took Holli Womack, she didn't know at the time, I think she signed maybe one prescription not knowing it was a scam, and then they sat there and forged her prescriptions, 40 or 50 forgeries.

Again, Maria Vera -- Marie -- I'm going to do it again. I'm going to do a Burksism here. Maria Vera,

Ms. Puckett, and Ms. Hill were behind that.

Did she turn a blind eye? Absolutely not. She confronted Ms. Womack. She said, "Have you been doing something against this clinic?" Of course Ms. Womack didn't know what she was talking about and then realized and decided at that point she hadn't done anything wrong, and she didn't want to be accused of anything.

But Mrs. Hofstetter took an affirmative action every time something came up that appeared to be a problem. So if you look at that charge, she didn't deliberately ignore anything. In fact, she did the opposite. So that's the other charge that I would ask you to look at.

Now, the core of the government's case is built around two things. One are lenses. You've heard people talk about the lens that's -- the lens today as opposed to the lens back then. It's the lens that you see things through. You know, you hear people talk about rose-colored glasses. You know, they see something through rose-colored glasses because then it looks different.

Let me talk to you, if I may, if I have your permission to talk to you about what I think this case is through the lenses of different people.

This case started -- this case, I'm talking about the government's case, started when the FBI found people selling prescription medications on the street. They did stings. They

arrested them. And they learned from that that there was somebody by the name of Jess Butler, who was orchestrating some kind of a scam to get these pills.

So the government through the FBI, they put on their lens of a crime. I see this as a crime. This is a violation of the law. So what I'm going to do is I'm going to follow it to its furtherest point. And so they get wiretaps. They get wiretaps. And according to Andy Chapman, they find out that, lo and behold, Jess Butler is up to it -- up to his neck in this business.

But more than that, they find out that Jess Butler is working with three people on the inside of our clinic, Mrs. Puckett, Mrs. Hill, and Mrs. Newman. Not this Newman, but Patty Newman.

So what do they do? They get more wiretaps. And when they get more wiretaps, they get taps on Mrs. Puckett and Mrs. Hill's phones and Mrs. Newman's.

That's when they learn about what those ladies were up to in this clinic.

I asked Andy Chapman, I said, "Well, Agent Chapman, did you try to get information about Mrs. Hofstetter?"

And he said, "No."

And I said, "Well, why not?"

He said, "Because we couldn't find anything that she had done, according to these wiretaps."

That's where the wiretaps stopped. Now, I know that Mr. Stone will get up and say, well, they -- the girls left and they didn't have time to work it. Well, they worked it -- they worked this thing for a long time.

And even after -- and even after they left in the summer of 2014, these clinics were still operating up until March of 2015, which didn't stop them from attempting to see if there was anything that Mrs. Hofstetter had said or done by wiretap, illegal.

They did have phone conversations, according to Mrs. Puckett, where Mrs. Hofstetter called her a couple of times, one of which she was asking her, "What's this deal about the pain cream," and they talked about Maria Vera.

So that's the lens that this started with. That's the FBI's lens. They see this case as a crime, so everything that touches it has to be a crime.

Well, what about other views of this case? Well -- and I'll go into this a little bit later, but you've got people like Ben Rodriguez, and I certainly want to talk about Mr. Rodriguez, and Mr. Tipton. They see this case through their lenses of if I can throw Sylvia Hofstetter under the bus, then I can win favor with the government and get a 5K motion, even though Mr. Rodriguez says he doesn't know anything about a 5K motion.

You-all do, because you heard all these witnesses

come in here. We had almost 50 witnesses march up there, and a lot of them talked to you about, "Yeah, I want that 5K motion. I'm here. I need that 5K motion. I want liberty. I want out. Or I want a benefit. I want a break." Ms. Puckett, Ms. Hill, Mr. Tipton, he hadn't even been sentenced yet. The only one that acted like he didn't know anything about was the ringleader, Mr. Rodriguez, as far as throwing people under the bus.

So the lenses of that, let's talk about some other lenses. Let's talk about the providers that came in and testified. They were scared to death. And I remember asking one of them that they were concerned about what was going on, and I said, "Are you concerned because you see these four fellow employees and workers that you worked with sitting over here in a criminal courtroom, and you see this entourage of the FBI and the U.S. attorney and the Washington RICO chief deputy sitting here prosecuting?"

Well, quite frankly, if I had even worked in that clinic, I'd be scared to death if I saw all of this. And they were scared. They admitted they were scared. And they were.

So they looked through this lens like, I'm not getting in the middle of this. Now, I look back, I look back 20/20 hindsight, and yes, I can now see now that things have come to light about what was going on with Puckett and Hill and all that. Yes, I can see that that was a problem area. I can

see that now.

The government's case, I would say to you, is built upon 2020 hindsight and a 30,000 view from the sky looking down, not looking at the evidence as it took place on a daily basis.

So the last lens or the second to last lens they want to talk to you about is the lens that Andy Chapman talked about in his testimony.

You remember Mr. Chapman being asked about Melanie Rucker. She was, you remember, the lady that worked for the Department of Health that would come in and do investigations on the clinics and audit the charts and those types of things. And Mr. Rucker -- I mean, Ms. Rucker and Mr. Chapman had a conversation. And Mr. Chapman had said that he disagreed with what she had said.

And then there was sort of back and forth. Well, what did she say? Finally, we got the answer. And what he first said is she would say something to the effect that she would be surprised if they were doing anything wrong.

I said, "Now, Agent Chapman, let's look at your affidavit. Please look at that. Refresh your recollection."

And he did. And then he said, after refreshing his recollection, "She said that in her investigations, these clinics were legitimate." And he said, "Yeah, that's what she said."

Now, if you'll look through the lens of the Department of Health and Melanie Rucker's comments to the FBI agent, the lenses of the health department is, these were legitimate clinics. No evidence to the contrary, as far as the Department of Health.

And who is the Department of Health? They are one of the regulatory bodies that regulate pain clinics in the state of Tennessee. That's how they're regulated.

Now, Mr. Stone came back with Mr. Chapman and said to Mr. Chapman, "Now, Mr. Chapman, you spent hours and thousands of hours and thousands of man hours and thousands of phone calls and thousands of wiretaps, you can't sit there and say that Mrs. Rucker's investigation could even come close to your investigation."

He said, "That's right."

In fact, he said, "It's like in a different ZIP Code."

And Mr. Chapman says, "Right."

And you know what? I don't necessarily disagree with showing a difference. But what I do show to you or suggest to you, again, Andy Chapman, Agent Chapman is seeing it through what? The crime, the glasses through the crime.

What is Melanie Rucker looking at it through? The clinic and the clinic records and the clinic files. She finds it legitimate. She is an investigator. She's a nurse by

profession. That's what -- and she works for the Department of Health. That's exactly what she does. If there's been a complaint, she goes and checks the complaint out. She goes in --

MR. STONE: Your Honor, I'm going to object. This goes too far. There are no facts in evidence. They have subpoena power. They did not subpoena Ms. Rucker. This is -- there are no facts in evidence. He's just talking about things that he thinks might be true or something, I guess.

THE COURT: What about that, Mr. Burks?

MR. BURKS: I think I can argue I think it's clear that she says her investigations into these clinics as the representative of the Department of Health said it was legitimate. And all I'm expanding on is that in doing that, she looked at files, she looked at --

MR. STONE: Your Honor, none of this is in evidence. None of it.

MR. BURKS: I think it's fair argument.

THE COURT: Well, the question is, are you arguing from the evidence in the record?

MR. BURKS: I think I am. I really do. I think the investigation --

THE COURT: That's the standard. So go ahead with keeping that in mind.

MR. BURKS: All right. Thank you, Your Honor.

They're different investigations. It's different lenses that these clinics were looked at. That's the point I'm trying to make. And if you look at it through the Department of Health, according to Melanie Rucker, these clinics were legitimate. It's what she said to Andy Chapman. And that's what he testified that she said. Those are different lenses. Those are important lenses.

Why are they important is because assuming one that investigates the clinics and looks at files will determine whether or not these are, as the government likes to talk about, window dressing files or if they're legitimate pain management heal -- where they're treating these patient files. That's the lens that the Department of Health would look at at these files and look at these clinics. So those are different lenses.

The last lens is your lens. You-all have heard all this proof. You can weigh what you've heard and how you look at that. But you're going to have the lens of this jury to determine what the truth is, what was proven beyond a reasonable doubt or not. And it's your lenses that makes the most important issues of this case. It's how you see it, each one of you see it.

So it's your lenses that are going to investigate and have investigated what came from this witness stand and what this Honor will tell you about the law, not what we talk about.

You know we're trying to underline things we think are important. But it's what you hear from that witness stand and what the Court tells you about it, what evidence that you see. And there's a lot of that evidence there.

But you're the ones that will make the ultimate determination through your lenses, not the FBI, not the providers, not anybody else. You can take into consideration what they've said, and certainly I think those are important. But it goes to the crux of the case. Who looked at these files during the course of the investigation? FBI didn't. They didn't get their experts to even look at it until sometime later. They were looking at it as the crime. Department of Health was looking at it.

So you've heard from the experts and Mr. Whitt, Ms. Pearson talk about the experts, and they're talking about legitimacy of the patient files. And I'm not going to repeat all that. Everybody has done a good job of wringing their side out. Ms. Pearson brought her position out. Mr. Whitt has done a good job telling you what Dr. Browder and Nurse Practitioner McCoy have had to say about it.

But you add that one other element in there I think is important, and that is there's another lens that looked at that in addition to these experts. It's the Department of Health. It's Melanie Rucker. That's important.

Okay. I am watching my time, and I know we've got to

move, and I'm going to try my best to see what I can do. Let's talk about -- let's talk about some important witnesses in this case.

Oh, oh, I forgot. I apologize. Can I back up just for a second? Okay? Another deliberate ignorance argument. You remember not only -- not only did Mrs. Hofstetter challenge and get her clinic to look at these files, but she did something else.

Exhibit 582, you remember, she contacted Sterling Labs, and said, "Hey, we're missing this stuff. We need them." And what we know is that Deana Haney -- Haney -- Haney -- I guess it's Haney. I can't hardly read it. I apologize.

She says, I wanted to inform you of the missing drug screens reports matters. I was informed and shown that some of the patient files have missing drug screen reports. I reviewed the files and began to take action on replenishing the patient's records.

Now, is that a deliberate ignorance of turning away from a problem on behalf of Mrs. Hofstetter? And then she tells us about some of the files.

And we got Jessica Lively, her files apparently had things missing. She's one of the sponsored patients.

Jessica Watson, we know about her. She's another sponsored patient that were going through Puckett and Hill, and her stuff is missing.

We've got Lisa Elliott. Hey, we know about Lisa. She was going through, wasn't she. She was with Butler and that crew. And guess what? She got stuff missing.

Now, how did she get -- how did these people get all this stuff missing? It was Hill and Puckett, and that's why they're looking through this. I could go down through there. And you-all can look at this when you go back there, but some of those are the same names that they're looking at, Mario Boyd, you haven't heard that he was one of them too.

Hey, look here, number three. Guess what? Who's missing stuff in his file? We recognize that name. That's Mr. Butler. Mr. Butler is the one that was working with Puckett and Hill, and lo and behold, he's got stuff missing out of his file.

Now, how did those get missing? Well, we know. We know Puckett and Hill did it. We know that. That's the scam. And to sit here and say, well, you know, just a little side venture thing, no, it wasn't. It was a scam that did a couple of things. It puts patients at risk. It's not about the money issue, even though there was money. And even though we know Stephanie Puckett said she later became sponsors of people so she would get the drugs. She sent her husband in, Michael, get the drugs. Ms. Hill's husband came in, got drugs.

They were drug dealers. They weren't just working in the clinics. They were drug dealers. They were getting pills

and selling pills. That's a drug dealer. That's what they were doing.

And they were putting these nurse practitioners and doctors in harm's way, because they didn't have the material that they should have had in order to look at something to determine what was in the best interest of these patients. They want to say that these nurse practitioners didn't care about these patients. Well, they did care about them. They just didn't have the information because Puckett and Hill didn't give a flip about them. They wanted the money.

That's the scam. That's the crux of this case. That's the crux of their case. To come in here and say, well, this was just a pill mill, we'll talk about that for a few more minutes, is not right.

What sets this case apart from any other illegal pain clinic case is we've got the fox guarding the henhouse. We've got the people that we've trusted to do it right doing it wrong, and we didn't know about it. And Puckett says we didn't know about it. Everybody says we didn't know about it.

But that was what was going on. That's what distinguishes this case from any other case you will run across involving an alleged pill mill or pain clinic. It's what Puckett and Hill and Newman were doing and getting away with it under the cloak of secrecy, under the cloak of deceitfulness. And that's what this case is really about.

Now, there were a lot of people arrested, a lot of people charged. We also have -- we talked about, and I think it's important to remember a couple of things that we learned from those wiretaps that finally were admitted to by Mrs. Puckett.

Y'all know I'm not that organized. I hope you know that, don't you. I'm sorry. Kind of like the scorpion and the fox, and the fox gives the scorpion a ride across the river, and he says, "Don't sting me scorpion." Scorpion says, "I won't do it." Gets across the river and the scorpion stings and kills the fox. The fox said, "Why did you do that?" The scorpion says, "Well, it's just my nature."

I guess it's sort of my nature to sort of look for some of this stuff, and I do apologize for that. What I'm looking for -- oh, thank you. She's pretty good, isn't she?

Stephanie Puckett, I want to touch base on a couple of wiretaps, and I think these are really important. Mrs. Puckett finally admitted this. And you heard Mr. Reagan touch base on this, but, again, I think it's important to bring it up.

When Mr. Butler was arrested, you remember that, and they got on that phone conversation and they told us all about it. And what was said was, Mrs. Hill was scared because Mr. Puckett -- Mr. Butler is now charged with some offense.

And she says, "Well," to Ms. Puckett, "Ms. Puckett,"

she probably called her Stephanie, "Stephanie, is he going to turn on us? What if they wire him up and send him into the clinic?"

And what does Ms. Puckett say? She says, "Why would they -- why would he wear a wire for the providers? The providers don't do anything wrong. So it had to be to get me and you."

That's taletelling for two reasons. Number one, they know their time is short on this scheme. Number two, more importantly, these two ladies that don't think anybody is listening to them are talking in secret, saying these providers don't do anything wrong. These ladies were in those clinics day in and day out.

She's testified, Ms. Puckett did, that that's what they said in this conversation. That's important. They should know if this was a pill mill and these providers were just writing scripts. But that's not what she said. They were doing nothing wrong.

The other thing that sort of brings me into the other arguments I want to talk about is another phone conversation between these two ladies.

You remember Mrs. Puckett, once they get into this conversation -- these conversations are very close to each other. Mrs. Puckett has to say or admit, Ms. Hill, I've been in trouble. You know, I had robbery, prostitution, I mean, a

myriad of things. And the one thing I learned is when in trouble, you're trying to find a way out.

Now, that's not just Mrs. Puckett, that's any of these people that came in and took that stand. What are they doing? They're trying to find a way out. And a way out is throwing somebody else under the bus.

Those aren't my words. Those are Stephanie Puckett's words. But those could have just easily have been the words of Chris Tipton and Ben Rodriguez, because each of them came in here to try to avoid further trouble or avoid a stiffer sentence of finding someone to throw under the bus.

And who did they try to throw under? Sylvia Hofstetter. Because that's the way the criminals work. You get in trouble, and you say what you got to say to appease you who you've got to appease.

And in these cases, to get that 5K motion -- because with the 5K motion, Mr. Stone will stand up and ask this Court to reduce that sentence. But to do it, you got to throw somebody under the bus. And the person that you throw under is the person that's here asking the jury to try to determine what the truth is in this case. That's Mrs. Hofstetter. So the code of the criminal and the pawn is to find somebody to throw under the bus.

And I'm going to come back to finish with those two witnesses. But I do want to talk about a couple more quick

things. Again, this sort of goes to the medical -- this is sort of jumping a little bit around.

I want to talk about Dr. Valley, because that's, I think, an important part of this. They put on Mr. Blumenthal's e-mails about all the trouble in Dodge City, so to speak, of the clinics, trouble, trouble, trouble everywhere.

Well, you did see where Dr. Blumenthal was kind of saying, "Wait a minute, you know, we had these meetings. It's really been helpful."

But Dr. Valley, as you remember, actually came into this by saying, "You need to get rid of the medical director," which was Dr. Blumenthal, because Dr. Valley wanted to become the sole doctor there.

And Dr. Valley then presented, as you-all will remember, that contract. Do you remember the contract that he sent to Chris Tipton? Remember that, where he said, I want you to pay me all this money, pay me $11,000 a month consulting fee, pay me a quarter of a million dollars a year to manage all these clinics?

And oh, by the way, I want you to build me a clinic up in upper East Tennessee that will be my clinic. If I ever decide to leave, that will be mine. And the partners said no. And that's sort of started flushing Dr. Valley a little bit out of the realm of what he thought he was going to end up with.

He ultimately hooked up with Chris Tipton, because he

saw the money train. Mr. Tipton was -- he was rolling with all these deals going on, you know, and Dr. Valley, hey, this looks pretty good. So he hooked his wagon to Chris Tipton, and he and Chris went down to Chattanooga. And guess what? The scorpion stung again. He caught Dr. Valley and cheated him.

But Dr. Valley, the important thing that I want to talk about, two things. One is, what he did tell us that's important, one of which was -- and you-all saw this, and I pulled these up.

This is Exhibit 543. This is just an example that we use to show Dr. Valley and a notation. Do you remember seeing this? And we talked a lot about that, where Dr. Valley would look at the file.

Now, remember these medical doctors had a duty to look at how many of the -- how many of the files, 20 percent, 50 percent, it was a hundred percent, wasn't it? It was an opiate file, they had to look at every file and chart it.

So Dr. Valley did that, and on this Ricky Nelson file, on May the 9th, 2012, and I just -- I pulled this up, and it says, "Chart review 5/15/12. I concur in treatment plan," with the signature "Valley."

Now, when Dr. Valley was on the stand, I showed him these, and I asked him what did that mean? What did he actually do in order to write that concurring thing about the treatment plan?

In his testimony, he told us this is what he did. He told us he looked at the chief complaints. He told us that he looked for any history or present illness that the nurse practitioner listed. He looked at previous visits and any reference to previous visits. He looked for comments regarding previous urine drug screens.

He said, "I flipped back to the previous visits to see if there were any outstanding -- anything outstanding that wasn't addressed in the notes." He checked the urine screens to determine if there was any aberrant drug screens, anything in there that shouldn't be in there. And then he said, "I determined whether or not there was an appropriate diagnosis that met the criteria supported by the physical findings."

What does that sound like? Legitimate medical purpose? And then he said, "I then determined if the treatment plan was appropriate. And if I determined the treatment plan was appropriate, I concurred in the treatment plan."

While Dr. Valley was at this clinic, that's how he handled these files. That's what he told us from the witness stand. And that is consistent with what Dr. Browder and nurse McCoy told us. These are some of the same things on that wheel you remember that Mr. Whitt showed you. These are the same type of things. These are activities that Dr. Valley looked at and did, and then he concurred or he didn't. You know, he said, "There are times I put a note. I don't concur. I put a

note."

Just for your reference, and I'm not going to go through it. You can go back and look at it. That's that contract, 541, Exhibit 541, I'd ask y'all to look at that he wanted to -- this clinic to do.

The final thing about Dr. Valley that we learned that I think was important, one of the things that the government has tried to suggest to you, that a clinic that gets paid in cash, that's a red flag. You heard them talk about this cash being a red flag.

Dr. Valley when asked about his clinic, he left Chattanooga, now he has a clinic up in East Tennessee. And he was asked, "Dr. Valley, do you take insurance?"

He said, "Nope."

"Well, how do you get paid?"

He said, "I take cash."

Does that mean that he's running an illegal pain clinic? No. That's a legitimate way. If someone chooses to do it in cash, they do it in cash.

So Dr. Valley gives us some important information about the snapshot of this clinic during a time leading up to and right before Puckett and Hill get their claws into these clinics.

And at the time that Dr. Valley was there, he was approving these files. And not only approving them and

concurring with them, he determined that these were legitimate, reasonable treatment plans for these patients.

Now, to sit there and say that these patients were not receiving medical care, it's just not correct. It's just not accurate. Dr. Valley was the government's witness. He wasn't our witness. We didn't call him as an expert. But that's what he shared with us on the witness stand. I concur with the treatment plan.

Do you remember Mr. Still, the money man, the one that had that Mississippi drawl? Y'all remember him, don't you? He got -- he's kind of cute, wasn't he? Yeah.

He said that he is attributing $33,000 of some money that Mrs. Hofstetter -- you remember that? So that's kind of like -- that's part of this theory of looking at money laundering.

And lo and behold, we presented to him a check of $33,000 at that same time frame that was actually a check that went through Mrs. Puckett's account to pay to Prodigal, because these were moneys that were given to Mrs. Hofstetter on behalf of the partners that were buying Prodigal.

So this wasn't any money-laundering issue. This was a check that Mr. Still just apparently didn't look for. That's Exhibit No. 572, if you want to review that as well.

I want to talk about discharges. I'm trying to watch my time, Your Honor.

THE COURT: You've got additional time. We'll go about five or ten more minutes, and if you're not done, you can finish up in the morning.

MR. BURKS: Maybe this will be a good place to stop on discharges. I can do that.

THE COURT: All right. Go ahead with that.

MR. BURKS: Thank you. Again, thank you-all for your patience. One of these days, I'm going to get like Ms. Pearson where you can flip that thing and flip it up there. She did a good job. I liked that.

You remember we had the discharge -- battle of government's discharges, Mrs. Sherrod's discharges, and they were not exact, because as you heard, there were different opportunities to look at the files, and maybe not look at all the files.

But the bottom line is, and what -- what we know from Agent Vehec is that they're really about -- they say the same stuff. And what they say is -- I've got my second page. Let's find the first page for you here. Might just lean over there and ask her what her number was, but I can't do that. All right. Let's see if I can't find that. I got it. I found it. I got it. Thank you. Okay. Here we go.

Now, you got to ask yourself a question. If we're operating a pill mill, the last thing you want to do is get rid of patients.

Now, I know the government will want to say, well, that's just window dressing. We keep hearing that term, window dressing, window dressing, window dressing. I consider it a code saying we really can't explain it illegally, so I can't tell you that it makes it legitimate looking, because it is legitimate to discharge patients. So we just call it -- we just call it window dressing. So that way they get around with not really confronting what the facts are. But you-all determine whether this makes sense to you as to whether this was a pain clinic or not.

Now, Agent Vehec said that she found 2,000 -- sorry, Jeff, it's 2,000, not 200 -- 2,083 discharges, and they had all those charts and what years, and we've got the same stuff. But I think this is the key.

Now, they would have you to believe, by listening to the testimony, that they would discharge a patient and then they just run them back to another place. That's kind of how they made you feel anyway. Made me feel that way until I saw these numbers. If I was going to discharge 2,083 people and I was just doing it to make it look good, then I was going to run them back to the other clinic, why did we only readmit 209? That's a little over ten percent. Which means another 80-something percent were discharged for good.

So that's not window dressing. That that's the loss of 1,793 patients, according to Agent Vehec. Ms. Sherrod

looked at files, and according to her records, and I admit that we probably didn't see as many. But she had 1,980 discharges. And, again, her independent investigation showed there was 229 readmitted. Those are about the same percentages.

Now, I ask you a simple question. Why in the world would a pain clinic discharge that many patients and not bring and readmit, if that's the government's theory of what we were really doing? That's the difference of 1,793, and Agent Vehec -- and I have no doubt that what she puts down -- and she said it's approximate. I think they're all approximate. There may be a file in there that somebody missed, but this gives you the general idea of the amount that's dealing with.

And then you've got a difference of 1,751 patients. Now, what is -- what is the real bottom line to that? What does that really tell us? It tells us that this clinic was getting rid of and discharging patients for legitimate discharge reasons, and only a certain amount were allowed to come back. And by virtue of that, they're either the dumbest pill mill that I've ever seen or they're a legitimate pain clinic.

Because what that means is, that if you just took one visit of that 1,793 patients, come back one time, one time only, $300, not even 350, or the 1,751, come one time, I'm not talking about month and month after month, what financially does that do to this clinic?

What that says is, that if those patients that they discharged did not get to come back, only just one more time under Ms. -- Agent Vehec's rule, this clinic basically lost over a half million dollars on one visit for 1,700 patients over that period of time.

And under Mrs. Sherrod's file, it's 525,000, again, over a half million dollars, if this clinic had patients taken out of this clinic. And these numbers, the 1,793 is the difference between those that came back. So these are the ones that never came back on both of these.

Those discharges, and I'm going -- I'll stop at this point. Those discharges tell a real important story. Pain clinics don't do that. People that are in it, as Ben Rodriguez says, we were just letting the train run, and when they stopped us, they stopped us. We're going fast and furious.

That isn't fast and furious, folks. That's not fast and furious. That's trying to run a legitimate pain management clinic. That's not window dressing. And that's not explainable in any other terms than the fact that it is.

And I'll stop on this for tonight.

THE COURT: All right.

MR. BURKS: Let me make one comment to get -- discharges. You heard a lot of the experts talk about, do they discharge, don't they discharge. Dr. Blake says we don't discharge, we just change modalities. Dr. Browder said, we

take a lot of patients that had been discharged from other clinics to our clinics to see if they have gotten the stuff out of their system, to recheck them.

But why? Why do you do that? Because they're chronic pain patients that have a legitimate medical purpose. They got discharged for various reasons. They still have a chronic pain problem.

So these pain management clinics, like Dr. Browder's clinic, will take these people in. They'll monitor them. They'll try to make sure they'll protect them. And that's what we tried to do, except for the fact Puckett and Hill were interfering with a lot of that.

With that, Your Honor, I will --

THE COURT: All right. Thank you. We'll let you finish up in the morning.

We'll excuse the jury for the day. Again, we're in the midst of closing argument. But keep in mind, closing arguments are not done. You haven't had the charge from the Court, all of which I anticipate you will -- will be delivered to you tomorrow. So you won't begin your deliberations until after that.

So keep in mind that you must, even though we're nearing the point where you will begin your deliberations, you still -- until that time, let's continue not to talk about the case among yourselves or engage in any type of deliberations

until probably sometime tomorrow afternoon.

Also, keep in mind that to the extent there is anything written about this case in the media or otherwise, you should put that aside and not read it at all until the case is over, either as it relates to this case or any other issues pertaining to this case, as we discussed in the past. Just put all that aside until the case is over.

But otherwise, have a pleasant evening and we will see you tomorrow, Tuesday, January 28, at 9:00 a.m.

Jury is excused.

(Jury out at 5:24 p.m.)

THE COURT: All right. Everyone please be seated just for a moment.

Mr. Burks, we'll give you nine to 9:30 time slot roughly. You got time to think about that.

MR. BURKS: That's fine. Thank you, Your Honor.

THE COURT: Mr. Oldham is going next, followed by Mr. Rodgers, and then we'll allow for rebuttal closing argument. And then we'll see where we are.

That may -- that will probably take all of the morning or possibly lunch break and rebuttal. We'll just see where we are in terms of how long Mr. Oldham and Mr. Rodgers take.

And then the Court, as you can tell by the jury charge pages, that will take some time for the Court to deliver

its charge. And then the jury will get the case.

Let me go ahead since -- well, we didn't finish early. But let me just go ahead and address, which I have not done yet, the defendants' motions, pursuant to Rule 29, that were brought at the close of the government's case in chief and renewed at the close of all the evidence in this case.

The defendants' primary arguments are that the government has offered insufficient evidence of the crimes charged in the fourth superseding indictment with particular emphasis on conspiratorial agreement, the enhanced penalties for overdose deaths, and whether the prescriptions were written outside the usual course of professional practice and not for a legitimate medical purpose.

Rule 29 provides that after the government closes its evidence, the Court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. Rule 29 permits both the motion to be renewed as well as for the Court to reserve decision on such motion until before or after the jury returns a verdict. As noted, the Court has previously reserved decision on the defendants' motions.

It's important to note that this is a different standard that the jury has, a significantly different standard.

For purposes of Rule 29, evidence is sufficient to sustain a conviction if after viewing the evidence in the light

most favorable to the prosecution and after giving the government the benefit of all inferences that could reasonably be drawn from the testimony, a rational trier of fact could find that the government has proved the legitimate medical purposes of the crime beyond a reasonable doubt.

First, defendants argued as to the conspiracy counts, particularly Counts 1, 2, and 4, that the government has not presented sufficient evidence of an agreement or defendant's state of mind with respect to the joining the alleged conspiracy. The government countered that its, quote, pill mill proof, closed quote, established that any reasonable person would know that the clinics in this case were pill mills, and by choosing to associate themselves with the clinics, the government's argument goes, defendants agreed to assist in the diversion of opioids to drug addicts and drug dealers.

The government argues that this evidence creates a classic jury question as to whether defendants had the requisite mindset with respect to the agreement element of the alleged conspiracies.

The Court finds that the government has presented sufficient evidence of an agreement for a rational jury to find that element of the conspiracy counts prove beyond a reasonable doubt.

The Sixth Circuit's jury pattern instruction or jury

instruction with respect to conspiratorial agreement, which the Court will give to the jury states that, quote, the government must prove there was a mutual understanding, either spoken or unspoken, to cooperate with each other to quote -- to, closed quote, carry out the objectives of the conspiracy here to distribute controlled substances outside the usual course of professional practice and not for a legitimate medical purpose.

The government's evidence is sufficient under Rule 29 standards for a rational jury to find that defendants knew that they were working at illegitimate pain clinics. Specifically, the government has introduced evidence, and it's been argued to date, or it was argued in the government's openings or -- opening closing argument, as well, that the clinic did not accept insurance and charged $300 per visit, the waiting rooms were full, patients were nodding off in the waiting rooms, neighboring businesses complained about the clinic's patients behavior, and other evidence the government contends that indicates the clinics were so-called, quote, pill mills, closed quote.

Viewing this evidence in the light most favorable to the government, a rational jury could find the defendants had at least a silent mutual understanding that by working at the clinics, they were agreeing to participate in the unlawful distribution of controlled substances.

The Court also finds that this and other evidence

prevented -- presented by the government is also sufficient for a rational jury to find that the government proved the other elements of the charged conspiracies beyond a reasonable doubt.

Specifically with respect to Count 1, the RICO conspiracy, Defendant Hofstetter also argued through Document 828 that the government failed to identify the subsection of 18 United States Code Section 1962 under which the government brings the RICO charge, entitling her to a judgment of acquittal as to Count 1.

The Court, for purposes of Rule 29, would reject this argument finding, as the government noted at the charge conference, that the subjection under which Defendant Hofstetter is charged is identified in the indictment in Paragraph 53 on Page 19.

Second, the defendants argued that the government has not presented evidence sufficient to find that the enhanced penalties for overdose deaths were caused by defendant's alleged criminal conduct, particularly defendants rely on evidence showing that some of the subjects of those enhanced penalties may have been selling or trading the drugs prescribed at the clinics, taking drugs other than those prescribed at the clinics, or failing to take the prescribed drugs as directed.

The government disagrees and argued that the facts upon which the defendants arguments rely were present in the Volkman II case, the Sixth Circuit 2015 case, including that

the deaths were caused by multidrug intoxication, which with respect to some of the charged deaths involved drugs other than those prescribed by the defendant, and at least two of the subjects were not taking the medications prescribed, that is crushing and snorting the pills or ingesting the pills more frequently than directed.

The Court finds that a rational jury could find beyond a reasonable doubt that the charged deaths were caused by the criminal conduct alleged in the counts associated with those deaths.

First, the Court notes that a failure to take a prescribed medication as directed does not sever the causal chain, again, under the Volkman II decision. And next with respect to the issue of a multidrug overdose, the Supreme Court in the Burrage v. United States, 2014 case, held that the use of a drug must be a but-for cause of the victim's death or injury.

This means the Sixth Circuit held in Volkman II that to establish causation with respect to an overdose -- an overdose death, a controlled substance distributed by a defendant must be an independently sufficient cause of death, even if the controlled substance combines with other factors to produce death.

Here, in this case, the testimony of, among others, Debbie Shockley, Tony Keathley, Randy Haynes, and Sara and

Christopher Kinsey provided sufficient evidence -- or provides sufficient evidence upon which a rational jury could find, given, among other factors, the close temporal connection between the patients' clinic visits and their deaths, that the opioids prescribed by defendants were the drugs or among the drugs ingested by the patients immediately prior to their deaths.

Testimony of Don Sherwood, Dr. Jerry Bradley, and Dr. Christopher Lochmuller completed the causal chain. It constitutes sufficient evidence upon which a rational jury could find that although other drugs may have been ingested by some of the patients immediately prior to their deaths, it may have been a contributing factor in some of those deaths, opioid intoxication was a but-for cause for each of the patient's deaths that are subjects -- that are the subjects of enhanced penalties in this case.

Accordingly, and again, viewing the evidence in the light most favorable to the government, the Court finds the government's evidence with respect to the overdose deaths is sufficient for a rational jury to find the Burrage causation standard satisfied.

Third, the defendants argued that the evidence is insufficient to establish that the prescription -- that the prescriptions at issue were outside the usual course of professional practice and not for a legitimate medical purpose.

They point or pointed at that time or in their arguments to the fact that in some instances, patient files were manipulated to support patient's claims of pain.

The government countered that it has presented evidence sufficient to find that this element is satisfied despite the manipulation of certain patient files. Specifically, the government pointed to the testimony of Drs. Blake and Carter, and, again it's, quote, pill mill proof, closed quote.

Again, for purposes of Rule 29 analysis, the Court would agree with the government's argument in this regard.

Although there has been evidence that patient files were manipulated by some clinic staff, the Court finds after reviewing the testimony presented by the government, both at its case in chief, as well as the testimony presented in the entirety of the trial, that a rational jury could conclude beyond a reasonable doubt that defendants were prescribing controlled substances outside the usual course of professional practice and not for legitimate medical purpose.

Among other things, defendants opinion witnesses opined that -- excuse me, the government's witnesses opined that charting assessment of patient's risk of abuse, physical examination, and other practices at the clinics were inadequate, and that the treatment plans that the clinics were generally limited to the prescription of high-dose opioids

written for patients despite among other factors introduced by the government, including minimal findings on their MRIs, their relative young age, and potential for drug abuse.

Moreover, among other things, defendant -- excuse me, the government's opinion witnesses based these opinions on review of the patient files, some of which may have been manipulated by clinic staff, so the potential manipulation of those files does not preclude a rational jury from concluding, as those witnesses opined, that the prescriptions at issue were unlawful.

Accordingly, the Court finds the government has presented sufficient evidence with respect to this element. The Court also finds that this and other evidence presented by the government is sufficient for a rational jury to find the government proved the other elements of the distribution counts, those being Count 14, 16, and 18 beyond a reasonable doubt.

In sum, with respect to all counts, when viewing the evidence in the light most favorable to the government and after giving the government the benefit of all inferences that reasonably could be drawn, the Court finds the government has presented sufficient evidence for a rational jury to return a verdict of guilty to all counts.

The Court notes that it reaches this determination both on the basis of the evidence at the time the motions were

initially brought and at the time of renewal, and accordingly, the Court will deny the defendants' respective motions.

Unless there's anything else we need to take up, we'll --

MR. REAGAN: One thing.

THE COURT: There is something. Mr. Reagan?

MR. REAGAN: Our motion for mistrial, you're taking that under advisement?

THE COURT: I've taken it under advisement. Haven't had a chance to go back and review the transcript and consider it in light of the evidence and the law, but I will address that probably tomorrow.

MR. WHITT: And I will say I believe the government and I have resolved the issue we had regarding the -- we're just going to let them go in as they were -- in the A version of those.

THE COURT: All right. Any -- is that --

MS. PEARSON: Yes, Your Honor. I believe what -- what counsel would like us to do, based on all the discussions we've had, is remove the 290 and substitute the A versions. Or would you prefer both went back?

MR. WHITT: No, I think just substitute.

THE COURT: Just the A version.

MS. PEARSON: Yes. Okay.

THE COURT: Just make sure Ms. Norwood has that, and

that will be fine.

All right. If nothing else, finish up with Mr. Burks in the morning, we'll turn to Mr. Oldham, and then to Mr. Rodgers, and then I believe Mr. Stone, and then the Court's charge, and then the jury will get the case.

Everyone have a nice evening.

THE COURTROOM DEPUTY: All rise. This honorable court stands in recess.

(Proceedings recessed at 5:37 p.m.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, Rebekah M. Lockwood, RDR, CRR, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings; and that the foregoing pages constitute a true and complete computer-aided transcription of my original stenographic notes to the best of my knowledge, skill, and ability.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand at Tampa, Hillsborough County, Florida this 9th day of April, 2020.

REBEKAH M. LOCKWOOD, RDR, CRR
Official Court Reporter
United States District Court
Middle District of Florida